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 FRANCHISE CORPORATION

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

ROOSEVELT KAIRY, et al.,

 Plaintiffs,

 vs.
 SUPERSHUTTLE INTERNATIONAL, INC.,
 et al,

Defendants.

SUPERSHUTTLE INTERNATIONAL, INC.
 and SUPERSHUTTLE FRANCHISE
 CORPORATION,

Counterclaimants,

vs.

ROOSEVELT KAIRY, LARRY BROWN,
 WAYNE DICKSON, DRAKE OSMUN, and
 HARJINDER SINGHDIETZ, all others
 determined to be similarly situated,

Counterclaim Defendants.

Case No.: 08-CV-02993 JSW (BZ)

Assigned to Hon. Jeffrey S. White

**ANSWER AND COUNTERCLAIMS OF
 DEFENDANT SUPERSHUTTLE INTER-
 NATIONAL, INC AND SUPERSHUTTLE
 FRANCHISE CORPORATION TO
 PLAINTIFFS' UNVERIFIED SECOND
 AMENDED COMPLAINT**

JURY TRIAL DEMANDED

Complaint Filed: May 8, 2008
 Trial Date:

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ANSWER, AFFIRMATIVE AND OTHER DEFENSES, AND COUNTER CLAIMS

Now come Defendants SuperShuttle International, Inc. ("SSI") and SuperShuttle Franchise Corporation ("SSFC") (as used herein, the term "Defendants" shall mean SSI and SSFC, as well as each, individually and/or jointly), and make their Answer, their Affirmative and Other Defenses, and their Counterclaims to the unverified Second Amended Complaint ("Complaint") of Plaintiffs Roosevelt Kairy, Larry Brown, Wayne Dickson, Drake Osmun, and Harjinder Singhdietz ("Plaintiffs"), to the best of their current information and belief, as follows (where matters are denied, they are denied both generally and specifically, unless otherwise stated):

ANSWER

Subject to the Affirmative and Other Defenses, and Counterclaims, Defendants plead as follows to the specific allegations of the Complaint:

1.

The allegations of Paragraph 1 are assertions of procedural history which require no answer and which are admitted insofar as they seek to assert that Plaintiffs have sued as alleged, but denied insofar as they seek to assert or imply that collective action or class treatment is appropriate, or that any members of the putative class or putative collective action are "similarly situated."

I. JURISDICTION

2.

The allegations of Paragraph 2 are recitations of procedural history which require no answer. They are, however, specifically denied insofar as they seek to assert or imply that collective or class treatment is appropriate.

II. VENUE AND INTRADISTRICT ASSIGNMENT

3.

The allegations of Paragraph 3 are admitted as to the venue allegations, only. Defendants specifically deny that any of the Plaintiffs, the putative collective action members, or the putative class members were employed by, hired by, or contracted by Defendants in this or any other District. Defendants further deny that any violations of the law have occurred.

III. INTRODUCTION

4.

Defendants admit that their business involves, in part, the airport transportation industry. Defendants deny all other allegations of Paragraph 4. Defendants admit that franchisees (who are alleged to be Defendants' "drivers" in the Complaint) have entered into Unit Franchise Agreements with either Cloud 9 Shuttle, Inc., SuperShuttle of San Francisco, Inc., Mini-Bus Systems, Inc., SuperShuttle Los Angeles, Inc., or Sacramento Transportation Services, Inc. (the "City Licensees"), which are distinct and separate entities from Defendants. Defendants specifically deny that they have hired, employed or contracted with Plaintiffs and/or "similarly situated Drivers"; that they have, unlawfully or otherwise classified or misclassified any such persons as independent contractors or franchisees or employees; that the franchisees which Plaintiffs label as "drivers" ¹ "work," are suffered to "work," or are employed by Defendants; that any violations of law have occurred (willful or otherwise); that Defendants exercise any "pervasive" or other control that establishes employee status; ² that Defendants do, should, or are legally obligated to, pay franchisees

¹ Throughout this answer, Defendants have interpreted the otherwise undefined and ambiguous term "drivers," as used in the complaint, to mean the Unit Franchisees and any persons whom Unit Franchisees retain or permit to operate the vehicle(s) used by their franchise.

² Defendants are aware that the Unit Franchise Agreements between the franchisees and City Licensees (not Defendants) state certain terms pertaining to the manner in which the Unit Franchises are to be operated in certain respects. These "requirements" arise from applicable law [e.g., California Franchise Relations Act (Cal. Bus. & Prof. Code §§ 20000, *et seq.*), the California Franchise Investment Law (Cal. Corp. Code §§ 31000, *et seq.*), publications of the California Department of Corporations interpreting these laws, and General Orders, including General Order 157-D, of the California Public Utilities Commission], or requirements imposed by airport authorities or other local authorities in the permits or agreements which allow SuperShuttle

1 “wages,” or record any franchisees’ “wages;” that Defendants “coerce” franchisees to purchase
2 services and/or items; that Defendants are required to provide franchisees with off duty meal periods
3 and/or have “failed” to do so; that Defendants owe plaintiffs or any other franchisees the sums
4 alleged in the Complaint, or any sums at all; that Defendants are legally responsible in any manner
5 for payment of any monies at all to Plaintiffs; and that Defendants violate, have violated, or do
6 violate, the FLSA or California law, as alleged or otherwise.

7
8 5.

9 The allegations of Paragraph 5 are assertions of procedural history which require no answer and are
10 admitted insofar as they assert Plaintiffs have brought the claims as alleged in the Complaint.
11 Defendants deny all other allegations insofar as they assert or imply that any of such claims have
12 any merit whatsoever, and/or that Defendants have committed any violations of federal or California
13 law or are entitled to any recovery or relief including attorneys’ fees and costs. Defendants deny all
14 allegations insofar as they assert or imply that collective or class treatment is appropriate in this
15 action.

16
17 6.

18 The allegations of Paragraph 6 are assertions of procedural history which require no answer and are
19 admitted insofar as they assert Plaintiffs have brought the claims as alleged in the Complaint.
20 Defendants deny all other allegations insofar as they assert or imply that any of such claims have
21 any merit whatsoever, and/or that Defendants have committed any violations of federal or California
22 law or are entitled to any recovery or relief including attorneys’ fees and costs. Defendants deny all
23 allegations insofar as they assert or imply that collective or class treatment is appropriate in this
24 action.

25
26
27 franchisees to operate on airport grounds. Moreover, on a repeated basis throughout their complaint,
28 Plaintiffs direct allegations to Defendants that are more properly directed to City Licensees, who
maintain the contractual and operational relationships with franchisees.

7.

The allegations of Paragraph 7 consist of a stylistic abbreviation which requires no answer, however, all allegations of this paragraph are denied to the extent that they assert or imply that collective or class treatment is appropriate in this action and/or that the putative class members are numerous.

IV. PARTIES

A. Plaintiffs

8.

Defendants admit that Plaintiff Roosevelt Kairy resides in Oakland, California (Alameda County). Defendants deny all other allegations of Paragraph 8. Defendants specifically deny that said Plaintiff is, or was, a driver in some contractual relationship with Defendants, during the time period specified, or thereafter, or at any other time period relevant to said Plaintiff's claims. Defendants specifically deny that Plaintiff has had, or has, any relationship with either or both of Defendants as alleged, or is employed by either or both of Defendants.

9.

Defendants admit that Plaintiff Larry Brown resides in Los Angeles, California (Los Angeles County.) Defendants deny all other allegations of Paragraph 9. Defendants specifically deny that said Plaintiff is, or was, a driver in some contractual relationship with Defendants, during the time period specified, or thereafter, or at any other time period relevant to said Plaintiff's claims. Defendants specifically deny that Plaintiff has had, or has, any relationship with either or both of Defendants as alleged, or is employed by either or both of Defendants.

10.

Defendants admit that Plaintiff Wayne Dickson resides in Sacramento, California (Sacramento County). Defendants deny all other allegations of Paragraph 10. Defendants specifically deny that said Plaintiff is, or was, a driver in some contractual relationship with Defendants, during the time

1 period specified, or thereafter, or at any other time period relevant to said Plaintiff's claims.
2 Defendants specifically deny that Plaintiff has had, or has, any relationship with either or both of
3 Defendants as alleged, is employed by either or both of Defendants, or is in any contractual
4 relationship with either or both of Defendants.

5
6 11.

7 Defendants admit that Plaintiff Drake Osmun resides in Concord, California (Contra Costa County).
8 Defendants deny all other allegations of Paragraph 11. Defendants specifically deny that said
9 Plaintiff is, or was, a driver in some contractual relationship with Defendants, during the time period
10 specified, or thereafter, or at any other time period relevant to said Plaintiff's claims. Defendants
11 specifically deny that Plaintiff has had, or has, any relationship with either or both of Defendants as
12 alleged, or is employed by either or both of Defendants.

13
14 12.

15 Defendants admit that Plaintiff Harjinder Singhdietz resides in Downey, California (Los Angeles
16 County). Defendants deny all other allegations of Paragraph 12. Defendants specifically deny that
17 said Plaintiff is, or was, a driver in some contractual relationship with Defendants, during the time
18 period specified, or thereafter, or at any other time period relevant to said Plaintiff's claims.
19 Defendants specifically deny that Plaintiff has had, or has, any relationship with either or both of
20 Defendants as alleged, or is employed by either or both of Defendants.

21
22 **B. Defendants**

23 13.

24 In response to the allegations of Paragraph 13, Defendants admit that SSI is incorporated under the
25 laws of Delaware. Defendants admit that SSI has registered a website, at www.supershuttle.com,
26 which states, among other matters, that SuperShuttle is "the nation's leading shared-ride airport
27 shuttle, providing door-to-door ground transportation to more than 8 million passengers per year."
28 Defendants further and specifically deny that either or both of them are "an employer covered by the

1 Fair Labor Standards Act, Cal. Labor Code [and/or] IWC wage order No. 9,” with respect to the
2 Plaintiffs or any members of the putative class or collective action.

3
4 14.

5 In response to the allegations of Paragraph 14, Defendants admit that SSFC is incorporated under
6 the laws of Delaware. Defendants further and specifically deny that either or both of them are “an
7 employer covered by the Fair Labor Standards Act, Cal. Labor Code [and/or] IWC wage order No.
8 9,” with respect to the Plaintiffs or any members of the putative class or collective action.

9
10 15.

11 Paragraph 15 sets forth only assertions of law and procedure which require no answer and which are
12 denied insofar as they seek to assert or imply any violations of law have occurred.

13
14 16.

15 Paragraph 16 sets forth only assertions of law and procedure which require no answer and which are
16 denied insofar as they seek to assert or imply any violations of law have occurred.

17
18 **V. STATEMENT OF FACTS**

19 17.

20 Defendants admit that franchisees operating with the SuperShuttle brand name provide airport
21 shuttle service to passengers whom franchisees have obtained via the SuperShuttle reservations
22 system. Defendants deny that they operate an “airport and charter passenger shuttle service” in the
23 context alleged in the Complaint. Franchisees provide airport shuttle and charter service to
24 passengers. Defendants cannot determine what is meant by plaintiffs’ term “integrated network” in
25 this context, and deny their use of an “integrated network” on that basis. Defendants deny all other
26 allegations of Paragraph 17.

27
28 18.

1 Defendants admit that franchisees transport passengers to and from certain airports serving greater
2 San Francisco, Los Angeles, Sacramento, San Diego, and Orange County, California. Defendants
3 deny all other allegations of Paragraph 18, and specifically deny that the franchisees in California
4 are employed by, or contracted with Defendants to transport passengers.

5
6 19.

7 Defendants admit that dispatchers, customer service representatives, and managerial employees (not
8 necessarily employees of Defendants) provide services to franchisees that may include dispatch,
9 customer service, and management functions. Defendants deny that these services are the sort of
10 "supervisory" employee control alleged in Paragraph 19. These services are not performed from
11 "terminals" in the sense of a centralized location where franchisees must return and park their
12 vehicles, as is perhaps suggested by the phrasing of Paragraph 19. Defendants admit that dispatch
13 services are provided to franchisees from various locations and by individuals not necessarily
14 employees of Defendants. Moreover, to the extent Plaintiffs' use of the term "dispatch" is intended
15 to suggest individual dispatcher control over the manner and means in which franchisees transport
16 passengers, such is denied. Defendants specifically deny that Defendants, or any employees of
17 Defendants, exercise and/or previously exercised at any time relevant to this action, "control" over
18 the franchisees' provision of transportation to passengers, in a way that establishes employment
19 status. Defendants admit that franchisees who have signed franchise agreements to operate their
20 vans within broad geographic areas associated with airports but deny the other allegations of
21 Paragraph 19 as to "working in designated geographical areas." Defendants admit that passenger
22 pick ups at locations are made available to franchisees via a computer dispatch system, but deny the
23 level of control and direction implied by Plaintiffs use of the phrasing "assign[ment] of customers
24 and locations for picking up and dropping off passengers each day." Defendants admit that
25 franchisees have accepted statutory, regulatory and contractual obligations that in part influence
26 their interactions with representatives of SuperShuttle. Defendants deny that "drivers" are subjected
27 by Defendants to employee discipline and financial punishment for "not following Defendants'
28 rules and regulations."

20.

Defendants deny all allegations contained in Paragraph 20.

21.

Defendants admit that Plaintiffs and other franchisees provide transportation to passengers made available to franchisees through the SuperShuttle reservation and marketing system. Defendants admit that franchisees operate their own business, which is the transport of shuttle passengers. Defendants otherwise specifically deny the allegations of Paragraph 21 and the implied conclusion, that Plaintiffs and other franchisees are effectively employees merely because they benefit from the SuperShuttle reservation and marketing system.

22.

Defendants deny all allegations of Paragraph 22. Defendants specifically deny that they exercise any legally significant "control" over any franchisees as alleged in Paragraph 22, and that they have classified the franchisees in any unlawful manner whatsoever.

23.

Defendants deny all allegations of Paragraph 23, and additionally incorporate their denials as set forth in Paragraph 22, above. Defendants specifically deny that they exercise any legally significant "control" over any franchisee as alleged in Paragraph 23, and that they have classified the franchisees in any unlawful manner whatsoever. Defendants further specifically deny all allegations of this paragraph which assert or imply that franchisees are "employees" of Defendants.

24.

Defendants deny all allegations contained in Paragraph 24. Defendants specifically deny that Plaintiffs and/or putative collective action members are misclassified, and that Defendants have classified or misclassified such persons. Defendants further specifically deny all allegations of this paragraph which assert or imply that franchisees are non-exempt and/or are "employees" of

1 Defendants under the FLSA, and that Defendants have "failed" to fulfill obligations applicable only
2 to such relationships. Defendants further specifically deny that they had, or have, any policy and/or
3 practice in regard to overtime hours or compensation applicable to Plaintiffs and/or putative
4 collective action members. Defendants currently lack sufficient information regarding the hours
5 actually worked by Plaintiffs and/or putative collective action members to permit it to affirm or
6 deny allegations regarding such matters, or whether such hours exceeded 40 hours in a work week,
7 and therefore deny these allegations, as well, on that basis. Defendants specifically deny that any
8 monies are owing from Defendants to Plaintiffs or putative collective action members, either as
9 alleged, or at all, in any amounts whatsoever.

10
11 25.

12 Defendants deny all allegations of Paragraph 25. Defendants specifically deny that Plaintiffs and/or
13 putative collective action members are misclassified, and that Defendants have classified or
14 misclassified such persons. Defendants further deny that Plaintiffs or putative collective action
15 members are employed by, or work in any manner for, Defendants, and that Defendants have
16 "failed" to fulfill obligations applicable only to such relationships. Defendants therefore deny that
17 they have "failed" to pay minimum wage compensation to Plaintiffs or to putative collective action
18 members for any reason whatsoever, inasmuch as Defendants have not employed any such persons
19 at any time, and in any manner, alleged herein. Defendants specifically deny that any monies are
20 owing from Defendants to Plaintiffs or putative collective action members, either as alleged, or at
21 all, in any amounts whatsoever.

22
23 26.

24 Defendants deny all allegations of Paragraph 26. Defendants specifically deny that Plaintiffs and/or
25 putative collective action members are misclassified, and that Defendants have classified or
26 misclassified such persons. Defendants further deny that Plaintiffs or putative collective action
27 members are employed by, or work in any manner for, Defendants, and that Defendants have
28 "failed" to fulfill obligations applicable only to such relationships. Defendants specifically deny all

1 allegations as alleged in Paragraph 26 insofar as they seek to assert or imply that class treatment is
2 appropriate. Defendants specifically deny that any monies are owing from Defendants to Plaintiffs
3 or putative class action members, either as alleged, or at all, in any amounts whatsoever.

4
5 27.

6 Defendants deny all allegations of Paragraph 27. Defendants specifically deny that Plaintiffs and/or
7 putative collective action members are misclassified, and that Defendants have classified or
8 misclassified such persons. Defendants further deny that Plaintiffs or putative collective action
9 members are employed by, or work in any manner for, Defendants, and that Defendants have
10 "failed" to fulfill obligations applicable only to such relationships. Defendants specifically deny all
11 allegations as alleged in Paragraph 27 insofar as they seek to assert or imply that class treatment is
12 appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that any
13 monies are owing from Defendants to Plaintiffs or putative class action members, either as alleged,
14 or at all, in any amounts whatsoever.

15
16 28.

17 Defendants deny all allegations of Paragraph 28. Defendants specifically deny that Plaintiffs and/or
18 putative collective action members are misclassified, and that Defendants have classified or
19 misclassified such persons. Defendants further deny that Plaintiffs or putative collective action
20 members are employed by, or work in any manner for, Defendants, and that Defendants have
21 "failed" to fulfill obligations applicable only to such relationships. Defendants specifically deny all
22 allegations as alleged in Paragraph 28 insofar as they seek to assert or imply that class treatment is
23 appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that any
24 monies are owing from Defendants to Plaintiffs or putative class action members, either as alleged,
25 or at all, in any amounts whatsoever.

29.

Defendants deny all allegations of Paragraph 29. Defendants specifically deny all allegations as alleged in Paragraph 29 insofar as they seek to assert or imply that class treatment is appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that Plaintiffs and/or putative collective action members are misclassified, and that Defendants have classified or misclassified such persons. Defendants further deny that Plaintiffs or putative class action members are employed by, or work in any manner for, Defendants. Defendants deny that they have "failed" to pay minimum wage compensation to Plaintiffs or to putative class action members for any reason whatsoever, inasmuch as Defendants have not employed any such persons at any time, and in any manner, alleged herein. Defendants specifically deny that any sums are owing from Defendants to Plaintiffs or putative class action members, either as alleged, or at all, in any sums whatsoever.

30.

Defendants deny all allegations of Paragraph 30. Defendants specifically deny that class treatment is appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that Plaintiffs and/or putative collective action members are misclassified, and that Defendants have classified or misclassified such persons. Defendants further specifically deny all allegations of this paragraph which assert or imply that franchisees are "employees" of Defendants under the California law, and that Defendants have "failed" to fulfill obligations applicable only to such relationships. Defendants further specifically deny that they were required to have, had, or have, any policy and/or practice in regard to overtime hours or compensation applicable to Plaintiffs and/or putative collective action members.

31.

Defendants deny all allegations of Paragraph 31. Defendants specifically deny all allegations as alleged in Paragraph 31 insofar as they seek to assert or imply that class treatment is appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that Plaintiffs and/or putative class action members are misclassified, and that Defendants have classified or misclassified

1 such persons. Defendants further specifically deny all allegations of this paragraph which assert or
2 imply that franchisees are "employees" of Defendants under California law, and therefore deny that
3 Defendants have "failed" to fulfill obligations applicable only to such relationships.

4
5 32.

6 Defendants deny all allegations of Paragraph 32. Defendants specifically deny all allegations as
7 alleged in Paragraph 32 insofar as they seek to assert or imply that class treatment is appropriate,
8 and/or that any persons are "similarly situated." Defendants specifically deny that Plaintiffs and/or
9 putative class action members are misclassified, and that Defendants have classified or misclassified
10 such persons. Defendants further specifically deny all allegations of this paragraph which assert or
11 imply that franchisees are "employees" of Defendants under California law, and therefore deny that
12 Defendants have "failed" to fulfill obligations applicable only to such relationships.

13
14 33.

15 Defendants deny all allegations of Paragraph 33. Defendants specifically deny all allegations as
16 alleged in Paragraph 33 insofar as they seek to assert or imply that class treatment is appropriate.
17 Defendants specifically deny that Plaintiffs and/or putative class action members are misclassified,
18 and that Defendants have classified or misclassified such persons. Defendants further specifically
19 deny all allegations of this paragraph which assert or imply that franchisees are "employees" of
20 Defendants under California law, and therefore deny that Defendants have "failed" to fulfill
21 obligations applicable only to such relationships.

22
23 34.

24 Defendants deny all allegations of Paragraph 34. Defendants specifically deny all allegations as
25 alleged in Paragraph 34 insofar as they seek to assert or imply that class treatment is appropriate,
26 and/or that any persons are "similarly situated." Defendants specifically deny that any violation of
27 law occurred in association with Plaintiffs Brown and Dickson as alleged. Defendants also
28 affirmatively allege that class treatment is inappropriate, based upon the fact that Plaintiffs Brown

1 and Dickson are making such claims set forth in this paragraph. Defendants specifically deny that
2 Plaintiffs and/or putative class action members are misclassified, and/or that Defendants have
3 classified or misclassified such persons. Defendants further specifically deny all allegations of this
4 paragraph which assert or imply that franchisees are “employees” of Defendants under California
5 law, and therefore deny that Defendants have “failed” to fulfill obligations applicable only to such
6 relationships.

7
8 **VI. COLLECTIVE ACTION ALLEGATIONS**

9 **35.**

10 Paragraph 35 contains assertions of procedural history which require no answer. Defendants deny
11 all substantive allegations of Paragraph 35. Defendants specifically deny all allegations as alleged in
12 Paragraph 35 insofar as they seek to assert or imply collective action treatment is appropriate.
13 Defendants deny all allegations of this paragraph that imply that Defendants had any contractual
14 relationship with the Plaintiffs or the members of the putative collective action, as set forth in the
15 Complaint, and/or at all. Defendants further specifically deny all allegations of this paragraph
16 which assert or imply that franchisees are non-exempt and/or are “employees” of Defendants under
17 the FLSA.

18
19 **36.**

20 Defendants deny all allegations of Paragraph 36. Defendants specifically deny all allegations of this
21 paragraph that imply that Defendants had any contractual relationship with the Plaintiffs or the
22 members of the putative collective action, as set forth in the Complaint and/or at all, and further
23 deny that Plaintiffs and the members of the putative collective action were employees of
24 Defendants. Defendants specifically deny such allegations insofar as they seek to assert or imply
25 that collective action is appropriate, and/or that Plaintiffs, and/or the members of the putative
26 collective action are “similarly situated” and/or perform any duties “for” Defendants, that
27 Defendants exercise any legally significant control over the manner and/or means whereby Plaintiffs
28 and/or members of the putative collective action perform any acts, that Plaintiffs and/or members of

1 the putative collective action are misclassified, and/or that Defendants have classified or
2 misclassified such persons.

3
4 37.

5 Defendants deny all allegations of Paragraph 37. Defendants specifically deny all allegations as
6 alleged in Paragraph 37 insofar as they seek to assert or imply collective action treatment is
7 appropriate, and/or that Plaintiffs, and/or the members of the putative collective action are "similarly
8 situated."

9
10 38.

11 Paragraph 38 contains assertions of procedural history which require no answer. Defendants deny
12 all allegations of Paragraph 38, insofar as they seek to assert or imply collective action treatment is
13 appropriate, and/or that Plaintiffs, and/or the members of the putative collective action are "similarly
14 situated," and/or that Plaintiffs should be given information pertaining to any members of the
15 putative collective action.

16
17 **VII. RULE 23 CLASS ACTION ALLEGATIONS.**

18 39.

19 Paragraph 39 contains assertions of procedural history which require no answer. Defendants deny
20 all allegations of Paragraph 39 that imply that Defendants had any contractual relationship with the
21 Plaintiffs or the members of the putative class action, as set forth in the Complaint, and/or at all.
22 Defendants specifically deny such allegations insofar as they seek to assert or imply that a class
23 treatment is appropriate.

24
25 40.

26 Paragraph 40 contains assertions of law and procedure which require no answer. Defendants lack
27 sufficient information at present upon which to admit or deny that Plaintiffs' counsel are competent,
28 or that Plaintiffs will prosecute the case vigorously on behalf of the Class, if the matter is certified,

1 and therefore deny these allegations on that basis. Defendants specifically deny that Plaintiffs have
 2 no conflicts of interest with the members of the putative class. Defendants deny all other allegations
 3 of Paragraph 40. Defendants specifically deny all allegations alleged in Paragraph 40 insofar as
 4 they seek to assert or imply collective or class treatment is appropriate, and/or that Plaintiffs, and/or
 5 the members of the putative collective action are "similarly situated." Defendants specifically deny
 6 that the issues listed in the Complaint will be more efficiently determined on a representative basis.
 7 Defendants affirmatively assert that the resolution of such issues will instead require individual
 8 determinations as to each of the Plaintiffs, and each of the putative collective action members and
 9 putative class members. Defendants specifically deny that Defendants have committed any
 10 violations of Federal or California State Law as alleged in Paragraph 40. Defendants specifically
 11 deny that the members of the putative class are numerous. Defendants specifically deny that the
 12 members of the putative class are known or ascertainable as asserted in the Complaint, or otherwise.
 13 Defendants deny that Plaintiffs, and/or any members of the putative class were injured in any
 14 manner by Defendants, or at all.

15 16 VIII. DAMAGES

17 41.

18 Defendants deny all allegations of Paragraph 41. Defendants specifically deny all allegations as
 19 alleged in Paragraph 41 insofar as they seek to assert or imply collective action or class treatment is
 20 appropriate. Defendants specifically deny that any violations of Federal or California State Law
 21 have occurred and that any damages are owed as alleged in Paragraph 41. Defendants specifically
 22 deny that any monies are owing from Defendants to Plaintiffs or putative class action members,
 23 either as alleged, or at all, in any amounts whatsoever.

24
25
26 / / /

27 / / /

IX. CLAIMS FOR RELIEF**FIRST CLAIM FOR RELIEF****(FLSA CLAIMS, 29 U.S.C. § 201, ET SEQ.)****(ON BEHALF OF PLAINTIFFS AND FLSA COLLECTIVE ACTION MEMBERS)**

42.

Paragraph 42 contains statements of procedure which require no answer. Defendants deny all other allegations of Paragraph 42 insofar as they seek to assert or imply collective action treatment is appropriate. Defendants specifically deny that they have violated the FLSA as alleged in this Claim for Relief. Defendants reallege and incorporate herein by reference, all denials and allegations set forth in regard to the paragraphs of the Complaint incorporated by Plaintiffs into Paragraph 42.

43.

Defendants admit that their gross operating revenues are in excess of \$500,000, and have been since at least May of 2004. Defendants admit that they are "engaged in interstate 'commerce.'" Defendants deny all other allegations. Defendants specifically deny that they are employers of the Plaintiffs and/or the putative collective action members under the FLSA, and that Plaintiffs and/or the putative collective action members are Defendants' "employees," under the FLSA.

44.

Paragraph 44 contains statements of law and procedure that require no answer. Defendants deny all other allegations of Paragraph 44. Defendants specifically deny any information and/or knowledge of whether it is "likely" individuals will sign consent forms to join this action, as alleged in Paragraph 44.

45.

Paragraph 45 contains statements of law that require no answer. Defendants deny all other allegations of Paragraph 45 insofar as they seek to assert or imply that collective action treatment is appropriate or that violations of the FLSA have occurred.

1
2 46.

3 Paragraph 46 contains statements of law that require no answer. Defendants deny all other
4 allegations of Paragraph 46 insofar as they seek to assert or imply that collective action treatment is
5 appropriate or that violations of the FLSA have occurred. Defendants specifically deny these
6 allegations to the extent that they imply that Defendants are, or were, the employers of the Plaintiffs
7 and/or the putative collective action members under the FLSA, and/or that Plaintiffs and/or the
8 putative collective action members are, or were, Defendants' "employees," under the FLSA.
9

10 47.

11 Paragraph 47 contains statements of law that require no answer. Defendants deny all other
12 allegations of Paragraph 47 insofar as they seek to assert or imply that collective action treatment is
13 appropriate or that violations of the FLSA have occurred. Defendants specifically deny these
14 allegations to the extent that they imply that Defendants are, or were, the employers of the Plaintiffs
15 and/or the putative collective action members under the FLSA, and/or that Plaintiffs and/or the
16 putative collective action members are, or were, Defendants' "employees," under the FLSA, and
17 therefore deny that Defendants have "failed" or "refused" to fulfill obligations applicable only to
18 such relationships.
19

20 48.

21 Paragraph 48 contains statements of law that require no answer. Defendants deny all other
22 allegations of Paragraph 48 insofar as they seek to assert or imply that collective action treatment is
23 appropriate or that violations of the FLSA have occurred. Defendants specifically deny that
24 Defendants are, or were, the employers of the Plaintiffs and/or the putative collective action
25 members under the FLSA. Defendants specifically deny that Plaintiffs and/or the putative collective
26 action members are, or were, Defendants' "employees," under the FLSA, and therefore deny that
27 Defendants have "violated" or "continue to violate" obligations applicable only to such
28 relationships.

1 49.

2 Defendants deny all allegations of Paragraph 49. Defendants specifically deny all allegations
3 insofar as they seek to assert or imply that collective action treatment is appropriate or that
4 violations of the FLSA have occurred. Defendants specifically deny that Defendants are, or were,
5 the employers of the Plaintiffs and/or the putative collective action members under the FLSA.
6 Defendants specifically deny that Plaintiffs and/or the putative collective action members are, or
7 were, Defendants' "employees," under the FLSA, and therefore deny that Defendants have "failed"
8 to fulfill obligations, or "violated" law applicable only to such relationships.

9
10 50.

11 Paragraph 50 contains statements of law that require no answer. Defendants deny all other
12 allegations of Paragraph 50 insofar as they seek to assert or imply that collective action treatment is
13 appropriate or that violations of the FLSA have occurred for which damages should be awarded.
14 Defendants specifically deny that Plaintiffs and/or the putative collective action members are, or
15 were, Defendants' "employees," under the FLSA, and therefore deny that the FLSA provides any
16 basis for the claims made in this paragraph. Defendants deny that Plaintiffs and/or putative
17 collective action members are entitled to any legal or equitable relief on account of these claims at
18 all, and/or in any sums whatsoever.

19
20 51.

21 Paragraph 51 contains statements of law that require no answer. Defendants deny all other
22 allegations of Paragraph 51 insofar as they seek to assert or imply that collective action treatment is
23 appropriate or that violations of the FLSA have occurred for which damages should be awarded.
24 Defendants deny that Plaintiffs and/or putative collective action members are entitled to any legal or
25 equitable relief on account of these claims, and/or in any amounts whatsoever, or at all.

SECOND CLAIM FOR RELIEF**MINIMUM WAGE (CAL. LABOR CODE §§ 1182.11, 1194 ET SEQ., IWC WAGE
ORDER NO. 9, MINIMUM WAGE ORDER)
(ON BEHALF OF PLAINTIFFS AND ALL CALIFORNIA CLASS MEMBERS)****52.**

Paragraph 52 contains statements of procedure which require no answer. Defendants deny all other allegations of Paragraph 52 insofar as they seek to assert or imply that class treatment is appropriate. Defendants specifically deny that they have engaged in any violation of California Labor Code and/or IWC Wage Order provisions, as alleged in this Claim for Relief. Defendants reallege and incorporate herein by reference, all denials and allegations set forth in regard to the paragraphs of the Complaint incorporated by Plaintiffs into Paragraph 52.

53.

Paragraph 53 contains statements of law which require no answer. Defendants admit that the minimum wage, under the referenced laws of the State of California, from January 1, 2002 through December 31, 2006 was \$6.75 per hour, from January 1, 2007 through December 31, 2007 was \$7.50 per hour, and from January 1, 2008 through present was (and is) \$8.00 per hour. Defendants admit that Labor Code §§ 1182.11 and 1197, Wage Order 9-2001, and the Minimum Wage Order were in effect for all times relevant to this Complaint. Defendants specifically deny all other allegations of the complaint and specifically deny that Defendants were or are in violation of Labor Code §§ 1182.11 and 1197, Wage Order 9-2001, and the Minimum Wage Order with respect to Plaintiffs and/or members of the putative class. Defendants specifically deny that they are, or were, the employer of Plaintiffs and/or any members of the putative class as described in this Complaint, and further deny that they are, or were, obligated to pay any monies whatsoever to Plaintiffs or any members of the putative class by reason of such status or the laws referenced in this paragraph. Defendants further deny that that a class action is appropriate.

54.

Defendants deny all allegations of Paragraph 54. Defendants specifically deny that Plaintiffs or putative class members are entitled to any recovery or that class treatment is appropriate. Defendants specifically deny that they are, or were, the employer of Plaintiffs and/or any members of the putative class as described in this Complaint. Defendants specifically deny that they caused Plaintiffs and/or any members of the putative class to "incur expenses [and/or] deductions," as described in this Complaint. Defendants further deny that they are, or were, obligated to pay any monies whatsoever to Plaintiffs or any members of the putative class under the laws referenced in this paragraph, or at all.

55.

Defendants deny all allegations of Paragraph 55. Defendants specifically deny that Plaintiffs or putative class members are entitled to any recovery or that class treatment is appropriate. Defendants specifically deny that they are, or were, the employer of Plaintiffs and/or any members of the putative class as described in this Complaint. Defendants specifically deny that they caused Plaintiffs and/or any members of the putative class to "incur expenses [and/or] deductions, that contributed to Defendants failing to pay minimum wages . . ." on the grounds that the phrase is unintelligible, and not factual as understood by Defendants. Defendants further deny that they are, or were, obligated to pay any monies whatsoever to Plaintiffs or any members of the putative class by reason of such status or the laws referenced in this paragraph.

56.

Defendants deny all allegations of Paragraph 56. Defendants specifically deny that Plaintiffs or putative class members are entitled to any recovery or that class treatment is appropriate. Defendants specifically deny that they were the employer of Plaintiffs and/or any members of the putative class as described in this Complaint. Defendants specifically deny that they are liable for reasonable attorneys' fees and/or costs under the California Labor Code and IWC Wage Order 9 and Minimum Wage Orders, and further specifically deny that they violated either or both of said laws.

1 Defendants specifically deny that they are, or were, the employer of Plaintiffs and/or any members
2 of the putative class as described in this Complaint. Defendants further deny that they are, or were,
3 obligated to pay any monies whatsoever to Plaintiffs or any members of the putative class under the
4 laws referenced in this paragraph, or at all.

5
6 57.

7 Defendants deny all allegations of Paragraph 57.

8
9 58.

10 Defendants deny all allegations of Paragraph 58. Defendants specifically deny that class treatment
11 is appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that
12 Plaintiffs or any others persons are entitled to any relief based upon the Complaint, either as alleged,
13 or at all, in any sums and in any manner whatsoever.

14
15 **THIRD CLAIM FOR RELIEF**

16 **FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION**

17 **(CAL. LABOR CODE §§ 510, 1194 ET SEQ., IWC WAGE ORDER NO. 9.)**

18 **(ON BEHALF OF PLAINTIFFS AND ALL CALIFORNIA CLASS MEMBERS)**

19 59.

20 Paragraph 59 contains statements of procedure which require no answer. Defendants deny all other
21 allegations of Paragraph 59 insofar as they seek to assert or imply that class treatment is appropriate,
22 and/or that any persons are "similarly situated." Defendants specifically deny that they have
23 engaged in any violation of California Labor Code and/or IWC Wage Order provisions, as alleged
24 in this Claim for Relief. Defendants reallege and incorporate herein by reference, all denials and
25 allegations set forth in regard to the paragraphs of the Complaint incorporated by Plaintiffs into
26 Paragraph 59.

60.

Defendants deny all allegations of Paragraph 60. Defendants specifically deny that Plaintiffs or putative class members are entitled to any recovery or that a class treatment is appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that they are, or were, the employer of Plaintiffs and/or any members of the putative class as described in this Complaint. Defendants specifically deny that they are liable for reasonable attorneys' fees and/or costs under the California Labor Code and IWC Wage Order 9 and/or Minimum Wage Orders. Defendants specifically deny that they violated any of said laws. Defendants further deny that they are, or were, obligated to pay any monies whatsoever to Plaintiffs or any members of the putative class under the laws referenced in this paragraph, in any amount whatsoever, or at all.

61.

Paragraph 61 contains assertions of law (and irrelevant allegations of effect) which require no answer. Defendants deny all other allegations of Paragraph 61. Defendants specifically deny that any violations of the California Labor Code and IWC Wage Order 9 have occurred as alleged in Paragraph 61. Defendants specifically deny that Plaintiffs or putative class members are entitled to any recovery from Defendants. Defendants further deny that class treatment is appropriate, and that any persons are "similarly situated."

62.

Defendants deny all allegations of Paragraph 62. Defendants specifically deny that they are, or were, the employer of any Plaintiffs and/or any members of the putative class as described in this Complaint. Defendants specifically deny that any acts of Defendants have resulted in any deprivation of overtime compensation to Plaintiffs or members of the putative class. Defendants specifically deny that Plaintiffs or putative class members are entitled to any recovery from Defendants of interest or attorneys' fees or costs, in any sums, whatsoever, or at all. Defendants further deny that class treatment is appropriate, and that any persons are "similarly situated."

1 63.

2 Defendants deny all allegations of Paragraph 63. Defendants specifically deny that they were the
3 employer of any Plaintiffs and/or any members of the putative class as described in this Complaint.
4 Defendants specifically deny that they are liable to any Plaintiffs and/or any members of the
5 putative class for any penalties, costs or damages under the laws referenced in this paragraph, or
6 otherwise. Defendants specifically deny that Plaintiffs or putative class members are entitled to any
7 recovery from Defendants of any monies whatsoever for attorneys' fees. Defendants further deny
8 that class treatment is appropriate, and that any persons are "similarly situated."

9
10 64.

11 Defendants deny all allegations of Paragraph 64. Defendants incorporate their denials as to specific
12 "actions" referenced elsewhere in the Complaint, by this reference. Defendants specifically deny
13 that any actions they have undertaken were malicious, fraudulent and/or oppressive. Defendants
14 specifically deny that they have, at any time, willfully acted or acted with any intent to injure
15 Plaintiffs and/or members of the putative class. Defendants deny that any of their actions were
16 taken in disregard, conscious or otherwise, of the rights of Plaintiffs and/or members of the putative
17 class.

18
19 65.

20 Defendants deny all allegations of Paragraph 65. Defendants specifically deny that class treatment
21 is appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that
22 Plaintiffs or any others persons are entitled to any relief based upon the Complaint, either as alleged,
23 in any amount and in any manner whatsoever, or at all.

FOURTH CLAIM FOR RELIEF**REIMBURSEMENT OF BUSINESS EXPENSES (CAL. LABOR CODE § 2802)
(ON BEHALF OF PLAINTIFFS AND ALL CALIFORNIA CLASS MEMBERS)**

66.

Paragraph 66 contains statements of procedure which require no answer. Defendants deny all other allegations of Paragraph 66 insofar as they seek to assert or imply that class treatment is appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that they have violated any provisions of the California Labor Code as alleged in this Claim for Relief. Defendants reallege and incorporate herein by reference, all denials and allegations set forth in regard to the paragraphs of the Complaint incorporated by Plaintiffs into Paragraph 66.

67.

Defendants are informed and believe that the franchisees referenced herein are responsible for their own business expenses such as lease or purchase of vehicles, fuel, maintenance, vehicle operating costs, vehicle decals, paint, insurance, communications equipment, electronic message service and uniforms as alleged in Paragraph 67. Defendants deny all other allegations and specifically deny that Plaintiffs or putative class members are entitled to any recovery or that a class action is appropriate. Defendants specifically deny that Plaintiffs or the putative class members have any relationship or status with Defendants as alleged. Defendants specifically deny that they provided "direct instruction" to Plaintiffs and/or members of the putative class, and further deny that Plaintiffs and/or members of the putative class acted upon any such instructions, or acted in discharge of any duties owed to Defendants, as alleged in this Complaint, so as to cause any such persons to thereby incur any expenses.

68.

Defendants deny all allegations of Paragraph 68. Defendants specifically deny that Plaintiffs or putative class members are entitled to any recovery or that class treatment is appropriate. Defendants specifically deny Plaintiffs or the putative class members have any relationship or status

1 with Defendants as alleged. Defendants admit that Plaintiffs executed contracts with City Licensees
2 and that franchisees had, and have, statutory, regulatory and contractual obligations as operators of
3 airport shuttle vans. Defendants specifically deny that they required employee drivers to incur
4 expenses or losses in discharge of duties and obedience owed to Defendants. Defendants specifically
5 deny that they have acted, or are acting, in violation of Labor Code § 2802.

6
7 69.

8 Defendants deny all allegations of Paragraph 69. Defendants specifically deny that Plaintiffs or
9 putative class members are entitled to any recovery or that class treatment appropriate. Defendants
10 specifically deny that Plaintiffs or any others persons are entitled to any relief based upon the
11 Complaint, either as alleged, or at all, in any sums and in any manner whatsoever. Defendants
12 specifically deny that they are liable to any Plaintiffs and/or any members of the putative class for
13 any attorneys' fees and/or costs or other damages under the laws referenced in this paragraph, or
14 otherwise.

15
16 70.

17 Defendants deny all allegations of Paragraph 70. Defendants specifically deny that Plaintiffs or
18 putative class members are entitled to any recovery or that class treatment is appropriate.
19 Defendants specifically deny that Plaintiffs or any others persons are entitled to any relief based
20 upon the Complaint, either as alleged, or at all, in any amount and in any manner whatsoever, or at
21 all. Defendants specifically deny that they are liable to any Plaintiffs and/or any members of the
22 putative class for any attorneys' fees and/or costs and/or interest, or other damages under the laws
23 referenced in this paragraph, or otherwise.

24
25 71.

26 Defendants deny all allegations of Paragraph 71. Defendants incorporate their denials as to specific
27 "actions" referenced elsewhere in the Complaint, by this reference. Defendants specifically deny
28 that any actions they have undertaken were malicious, fraudulent and/or oppressive. Defendants

specifically deny that they have, at any time, willfully acted or acted with any intent to injure Plaintiffs and/or members of the putative class. Defendants deny that any of their actions were taken in disregard, conscious or otherwise, of the rights of Plaintiffs and/or members of the putative class.

72.

Defendants deny all allegations of Paragraph 72. Defendants specifically deny that class treatment is appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that Plaintiffs or any others persons are entitled to any relief based upon the Complaint, either as alleged, or at all, in any sums and in any manner whatsoever.

FIFTH CLAIM FOR RELIEF

UNLAWFUL DEDUCTIONS FROM WAGES

(CAL. LABOR CODE §§ 221, 223, 400-410, IWC WAGE ORDER NO. 9)

(ON BEHALF OF PLAINTIFFS AND ALL CALIFORNIA CLASS MEMBERS)

73.

Paragraph 73 contains statements of procedure which require no answer. Defendants deny all other allegations of Paragraph 73 insofar as they seek to assert or imply that class treatment is appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that they have engaged in any violation of California Labor Code and/or IWC Wage Order provisions as alleged in this Claim for Relief. Defendants reallege and incorporate herein by reference, all denials and allegations set forth in regard to the paragraphs of the Complaint incorporated by Plaintiffs into Paragraph 73.

74.

Paragraph 74 consists entirely of statements of law which require no answer.

75.

1 Paragraph 75 consists entirely of statements of law which require no answer.

2
3 76.

4 Paragraph 76 consists entirely of statements of law which require no answer.

5
6 77.

7 Paragraph 77 consists entirely of statements of law which require no answer.

8
9 78.

10 Paragraph 78 consists entirely of statements of law and opinions regarding policy which require no
11 answer.

12
13 79.

14 Defendants deny all allegations of Paragraph 79. Defendants specifically deny that Plaintiffs or
15 putative class members are entitled to any recovery or that class treatment is appropriate, and/or that
16 any persons are "similarly situated." Defendants specifically deny that they were the employer of
17 Plaintiffs and/or any members of the putative class as described in this Complaint. Defendants
18 specifically deny that have violated the provisions of California Labor Code and/or IWC Wage
19 Order 9, as alleged in the Complaint. Defendants specifically deny that they violated said laws.
20 Defendants specifically deny that they have deducted any sums from the compensation of Plaintiffs
21 and/or any members of the putative class as described in this Complaint. Defendants further deny
22 that they were or are obligated to pay any monies whatsoever to Plaintiffs or any members of the
23 putative class, in any amount whatsoever, or at all.

24
25 80.

26 Defendants deny all allegations of Paragraph 80. Defendants specifically deny that Plaintiffs or
27 putative class members are entitled to any recovery or that class treatment is appropriate, and/or that
28 any persons are "similarly situated." Defendants specifically deny that they were the employer of

Plaintiffs and/or any members of the putative class as described in this Complaint. Defendants specifically deny that have violated the provisions of California Labor Code and/or IWC Wage Order 9, as alleged in the Complaint. Defendants specifically deny that they violated said laws. Defendants specifically deny that they are, or were, the employer of Plaintiffs and/or any members of the putative class as described in this Complaint. Defendants specifically deny that they violated said laws. Defendants specifically deny that they have deducted any sums from the compensation of Plaintiffs and/or any members of the putative class as described in this Complaint. Defendants further deny that they were or are obligated to pay any monies whatsoever to Plaintiffs or any members of the putative class under the laws referenced in this paragraph, or at all.

81.

Defendants deny all allegations of Paragraph 81. Defendants specifically deny that Plaintiffs or putative class members are entitled to any recovery or that class treatment is appropriate, and/or that any persons are “similarly situated.” Defendants specifically deny that they were the employer of Plaintiffs and/or any members of the putative class as described in this Complaint. Defendants specifically deny that have violated the provisions of California Labor Code and/or IWC Wage Order 9, as alleged in the Complaint. Defendants specifically deny that they are, or were, the employer of Plaintiffs and/or any members of the putative class as described in this Complaint. Defendants specifically deny that they have deducted any sums from the compensation of Plaintiffs and/or any members of the putative class as described in this Complaint. Defendants further deny that they were or are obligated to pay attorneys’ fees and/or costs, or any monies whatsoever to Plaintiffs or any members of the putative class under the laws referenced in this paragraph, in any amount whatsoever, or at all.

82.

Defendants deny all allegations of Paragraph 82. Defendants incorporate their denials as to specific “actions” referenced elsewhere in the Complaint, by this reference. Defendants specifically deny that any actions they have undertaken were malicious, fraudulent and/or oppressive. Defendants

1 specifically deny that they have, at any time, willfully acted or acted with any intent to injure
2 Plaintiffs and/or members of the putative class. Defendants deny that any of their actions were
3 taken in disregard, whether conscious or otherwise, of the rights of Plaintiffs and/or members of the
4 putative class.

5
6 83.

7 Defendants deny all allegations of Paragraph 83. Defendants specifically deny that class treatment
8 is appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that
9 Plaintiffs or any others persons are entitled to any relief based upon the Complaint, either as alleged,
10 in any sums whatsoever, or at all.

11
12 **SIXTH CLAIM FOR RELIEF**

13 **COERCED PURCHASES**

14 **(CAL. LABOR CODE § 450 ET SEQ.)**

15 **(ON BEHALF OF PLAINTIFFS AND ALL CALIFORNIA CLASS MEMBERS)**

16 84.

17 Paragraph 84 contains statements of procedure which require no answer. Defendants deny all other
18 allegations of Paragraph 84 insofar as they seek to assert or imply that class treatment is appropriate,
19 and/or that any persons are "similarly situated." Defendants specifically deny that they have
20 engaged in any violation of California Labor Code provisions as alleged in this Claim for Relief.
21 Defendants reallege and incorporate herein by reference, all denials and allegations set forth in
22 regard to the paragraphs of the Complaint incorporated by Plaintiffs into Paragraph 84.

23
24 85.

25 Defendants deny all allegations of Paragraph 85. Defendants specifically deny that Defendants have
26 violated Labor Code § 450 in regard to Plaintiffs or members of the putative class. Defendants
27 further specifically deny that class treatment is appropriate in this matter. Defendants specifically
28 deny that they have required, compelled or coerced Plaintiffs, or any putative class member, to

1 either patronize, lease or purchase, any equipment, services, uniforms or other goods or items, from
 2 Defendants or otherwise. Defendants specifically deny that Plaintiffs or putative class members
 3 have any relationship or status with Defendants as alleged.

4
 5 86.

6 Defendants deny all allegations of Paragraph 86. Defendants incorporate their denials as to specific
 7 “actions” referenced elsewhere in the Complaint, by this reference. Defendants specifically deny
 8 that any actions they have undertaken were malicious, fraudulent and/or oppressive. Defendants
 9 specifically deny that they have, at any time, willfully acted or acted with any intent to injure
 10 Plaintiffs and/or members of the putative class. Defendants deny that any of their actions were
 11 taken in disregard, conscious or otherwise, of the rights of Plaintiffs and/or members of the putative
 12 class.

13
 14 87.

15 Defendants deny all allegations of Paragraph 87. Defendants specifically deny that class treatment
 16 is appropriate, and/or that any persons are “similarly situated.” Defendants specifically deny that
 17 Plaintiffs or any others persons are entitled to any relief based upon the Complaint, either as alleged,
 18 in any amount whatsoever, or at all.

19
 20 **SEVENTH CLAIM FOR RELIEF**

21 **FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS**

22 **(CAL. LABOR CODE §§ 226.7, 512, IWC WAGE ORDER NO. 9)**

23 **(ON BEHALF OF PLAINTIFFS AND ALL CALIFORNIA CLASS MEMBERS)**

24 88.

25 Paragraph 88 contains statements of procedure which require no answer. Defendants deny all other
 26 allegations of Paragraph 88. Defendants specifically deny that class treatment is appropriate, and/or
 27 that any persons are “similarly situated.” Defendants specifically deny that they have engaged in
 28 any violation of California Labor Code or IWC Wage Order provisions as alleged in this Claim for

1 Relief. Defendants reallege and incorporate herein by reference, all denials and allegations set forth
2 in regard to the paragraphs of the Complaint incorporated by Plaintiffs into Paragraph 88.

3
4 89.

5 Paragraph 89 contains statements of law which require no answer. Defendants deny all other
6 allegations of Paragraph 89. Defendants specifically deny that class treatment is appropriate, and/or
7 that any persons are "similarly situated." Defendants specifically deny that they are, or were, the
8 employer of any Plaintiffs and/or any members of the putative class, as implied by this paragraph.
9 Defendants currently lack sufficient information or knowledge, and therefore deny that Plaintiffs or
10 putative class members worked in excess of five hours a day without taking a meal break, as alleged
11 in Paragraph 89.

12
13 90.

14 Paragraph 90 contains statements of law which require no answer. Defendants deny all other
15 allegations of Paragraph 90. Defendants specifically deny that Plaintiffs or putative class members
16 are entitled to any recovery or that a class action is appropriate. Each Defendant specifically denies
17 that it was the employer of any Plaintiffs and/or any members of the putative class, as implied by
18 this paragraph. Defendants currently lack sufficient information or knowledge, and therefore deny
19 that Plaintiffs or putative class members worked in excess of five hours a day without taking a meal
20 break, as alleged in Paragraph 90.

21
22 91.

23 Paragraph 91 contains statements of law which require no answer. Defendants deny all other
24 allegations of Paragraph 91. Defendants specifically deny that Plaintiffs or putative class members
25 are entitled to any recovery or that class treatment is appropriate. Defendants specifically deny that
26 have violated the provisions of California Labor Code and/or IWC Wage Orders, as alleged in the
27 Complaint. Defendants specifically deny that they are, or were, the employer of any Plaintiffs
28 and/or any members of the putative class as described in this Complaint. Defendants further deny

1 that they are, or were, obligated to pay attorneys' fees and/or costs, or any monies in any amount
 2 whatsoever to Plaintiffs or any members of the putative class under the laws referenced in this
 3 paragraph, or at all.

4
 5 92.

6 Defendants deny all allegations of Paragraph 92. Defendants incorporate their denials as to specific
 7 "actions" referenced elsewhere in the Complaint, by this reference. Defendants specifically deny
 8 that any actions they have undertaken were malicious, fraudulent and/or oppressive. Defendants
 9 specifically deny that they have, at any time, willfully acted or acted with any intent to injure
 10 Plaintiffs and/or members of the putative class. Defendants deny that any of their actions were
 11 taken in disregard, conscious or otherwise, of the rights of Plaintiffs and/or members of the putative
 12 class.

13
 14 93.

15 Defendants deny all allegations of Paragraph 93. Defendants specifically deny that class treatment
 16 is appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that
 17 Plaintiffs or any others persons are entitled to any relief based upon the Complaint, either as alleged,
 18 in any amount whatsoever, or at all.

19
 20 **EIGHTH CLAIM FOR RELIEF**

21 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

22 **(CAL. LABOR CODE §§ 226 & 226.3; IWC WAGE ORDER NO. 9)**

23 **(ON BEHALF OF PLAINTIFFS AND ALL CALIFORNIA CLASS MEMBERS)**

24 94.

25 Paragraph 94 contains statements of procedure which require no answer. Defendants deny all other
 26 allegations of Paragraph 94, insofar as they seek to assert or imply that class treatment is
 27 appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that they
 28 have engaged in any violation of California Labor Code or IWC Wage Order provisions as alleged

1 in this Claim for Relief. Defendants reallege and incorporate herein by reference, all denials and
2 allegations set forth in regard to the paragraphs of the Complaint incorporated by Plaintiffs into
3 Paragraph 94.

4
5 95.

6 Paragraph 95 consists entirely of statements of law which require no answer.
7

8 96.

9 Paragraph 96 contains statements of procedure which require no answer. Defendants deny all other
10 allegations of Paragraph 96, insofar as they seek to assert or imply that class treatment is
11 appropriate, and/or that any persons are "similarly situated." Defendants deny all other allegations
12 of Paragraph 96. Each Defendant specifically denies that it was the employer of any Plaintiffs
13 and/or any members of the putative class, as implied by this paragraph. Defendants specifically
14 deny that any actions were required of them in regard to any Plaintiffs and/or any members of the
15 putative class, by the provisions of law cited in this paragraph. Defendants further specifically deny
16 that Plaintiffs or any others persons are, or were, entitled to any relief based upon the Complaint,
17 either as alleged, in any amount whatsoever, or at all.

18
19 97.

20 Defendants deny all allegations of Paragraph 97. Defendants specifically deny that class treatment
21 is appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that
22 Plaintiffs or any others persons are entitled to any relief based upon the Complaint, either as alleged,
23 in any amount whatsoever, or at all.
24
25
26
27
28

NINTH CLAIM FOR RELIEF**FAILURE TO KEEP ACCURATE PAYROLL RECORDS****(CAL. LABOR CODE §§ 1174 & 1174.5; IWC WAGE ORDER NO. 10)****(ON BEHALF OF PLAINTIFFS AND ALL CALIFORNIA CLASS MEMBERS)**

98.

Paragraph 98 contains statements of procedure which require no answer. Defendants deny all other allegations of Paragraph 98, insofar as they seek to assert or imply that class treatment is appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that they have engaged in any violation of California Labor Code or IWC Wage Order provisions as alleged in this Claim for Relief. Defendants reallege and incorporate herein by reference, all denials and allegations set forth in regard to the paragraphs of the Complaint incorporated by Plaintiffs into Paragraph 98.

99.

Paragraph 99 contains statements of law which require no answer. The final sentence is incomplete, and it is not possible for Defendants to determine what is being alleged. Defendants deny all allegations of the sentence on that basis. Defendants deny all allegations of Paragraph 99, insofar as they seek to assert or imply that class treatment is appropriate, and/or that any persons are "similarly situated." Defendants further and specifically deny all other allegations of Paragraph 99. Defendants specifically deny that they have engaged in any violation of California Labor Code or IWC Wage Order provisions as alleged in this paragraph, and that such provisions of law required them to act as alleged in this paragraph. Defendants specifically deny that they are, or were, the employer of any Plaintiffs and/or any members of the putative class, as implied by this paragraph.

100.

Defendants deny all allegations of Paragraph 100, to the extent that they purport to pertain to any allegations of actions, omissions, breaches of duty. Defendants specifically deny that Plaintiffs or putative class members are entitled to any recovery or that class treatment is appropriate.

1 Defendants specifically deny that any member of the putative class has suffered any harm, or any
2 type and in any amount whatsoever, or at all.

3
4 101.

5 Defendants deny all allegations of Paragraph 101. Defendants specifically deny that class treatment
6 is appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that
7 Plaintiffs or any others persons are entitled to any relief based upon the Complaint, either as alleged,
8 in any amount whatsoever, or at all.

9
10 **TENTH CLAIM FOR RELIEF**

11 **WAITING TIME PENALTIES**

12 **(CAL. LABOR CODE §§ 201, 202 & 203)**

13 **(ON BEHALF OF PLAINTIFFS AND ALL CALIFORNIA CLASS MEMBERS)**

14 102.

15 Paragraph 102 contains statements of procedure which require no answer. Defendants deny all
16 other allegations of Paragraph 102, insofar as they seek to assert or imply that class treatment is
17 appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that they
18 have engaged in any violation of California Labor Code provisions as alleged in this Claim for
19 Relief. Defendants reallege and incorporate herein by reference, all denials and allegations set forth
20 in regard to the paragraphs of the Complaint incorporated by Plaintiffs into Paragraph 102.

21
22 103.

23 Paragraph 103 consists entirely of statements of law which require no answer.

24
25 104.

26 Paragraph 104 consists entirely of statements of law which require no answer.

105.

Paragraph 105 consists entirely of statements of law which require no answer.

106.

Paragraph 106 contains statements of law which require no answer. Defendants deny all other allegations of Paragraph 106. Defendants specifically deny that Plaintiffs Brown and Dickson, any other Plaintiff and/or any putative class members are entitled to any recovery. Defendants specifically deny that class treatment is appropriate, and/or that any persons are "similarly situated." Defendants further specifically deny that any violations of the California Labor Code have occurred as alleged in Paragraph 106. Defendants further and specifically deny that they are, or were, the employer of any Plaintiffs and/or any members of the putative class, as implied by this paragraph. Defendants specifically deny that Plaintiffs or putative class members are entitled to any recovery, of any kind whatsoever. Defendants specifically deny that any Plaintiff or member of the putative class has suffered any harm of any type, and in any amount whatsoever, or at all.

107.

Defendants deny all allegations of Paragraph 107. Defendants specifically deny that class treatment is appropriate, and/or that any persons are "similarly situated." Defendants specifically deny that Plaintiffs or any others persons are entitled to any relief based upon the Complaint, either as alleged, in any amounts whatsoever, or at all.

ELEVENTH CLAIM FOR RELIEF

VIOLATIONS OF THE UNFAIR COMPETITION LAW (UCL)

(CAL. BUSINESS & PROFESSIONS CODE §§ 17200-09)

(ON BEHALF OF PLAINTIFFS AND ALL CALIFORNIA CLASS MEMBERS)

108.

Paragraph 108 contains statements of procedure which require no answer. Defendants deny all other allegations of Paragraph 108. Defendants specifically deny that class treatment is appropriate,

1 and deny that any persons are "similarly situated." Defendants specifically deny that they have
2 engaged in any violation of California Labor Code provisions as alleged in this Claim for Relief.
3 Defendants reallege and incorporate herein by reference, all denials and allegations set forth in
4 regard to the paragraphs of the Complaint incorporated by Plaintiffs into Paragraph 108.

5
6 109.

7 Paragraph 109 consists entirely of statements of law which require no answer.
8

9 110.

10 Paragraph 110 consists entirely of statements of law which require no answer.
11

12 111.

13 Paragraph 111 contains statements of law which require no answer. Defendants deny all other
14 allegations of Paragraph 111. Defendants specifically deny that any actions or omissions on their
15 part have constituted, or do constitute, violations of the FLSA or California law as to Plaintiffs or
16 members of the putative collective action or putative class. Defendants reallege and incorporate
17 herein by reference, all denials and allegations set forth previously in regard to the allegations of the
18 Complaint incorporated by Plaintiffs into Paragraph 111. Defendants specifically deny that they
19 are, or were, the employer of any Plaintiffs or members of the putative class or the putative
20 collective action. Defendants specifically deny that class treatment is appropriate, and deny that any
21 persons are "similarly situated."

22 112.

23 Paragraph 112 contains statements of law which require no answer. Defendants deny all other
24 allegations of Paragraph 112. Defendants specifically deny that any actions or omissions on their
25 part have constituted unlawful, unfair and/or fraudulent predicate acts and/or practices, for purposes
26 of California Business and Professions Code, as alleged in Paragraph 112, or otherwise. Defendants
27 specifically incorporate their denials and allegations made previously in response to the original
28 assertions of Plaintiffs' Complaint, which Plaintiffs are referencing in this paragraph. Defendants

1 specifically deny that any member of the putative class has suffered any harm of any type, and in
2 any amount, as asserted in the Complaint. Defendants specifically deny that class treatment is
3 appropriate, and/or that any persons are "similarly situated." Defendants further specifically deny
4 that any violations of the California Labor Code have occurred as alleged in Paragraph 112.

5
6 113.

7 Defendants deny all allegations of Paragraph 113. Defendants specifically deny that class treatment
8 is appropriate, and further deny that "California Drivers" is a relevant class or subclass of the
9 putative class asserted in the Complaint. Defendants specifically deny that Plaintiffs or any member
10 of the putative class suffered any harm of any type, and in any amount whatsoever, or at all.
11 Defendants specifically deny that any actions or omissions on their part have constituted unlawful,
12 unfair and/or fraudulent acts and/or practices. Defendants specifically deny that they are, or were,
13 the employer of any Plaintiffs or members of the putative class or the putative collective action.

14
15 114.

16 Paragraph 114 contains assertions of law which require no answer. Defendants deny all other
17 allegations of Paragraph 114. Defendants specifically deny that class treatment is appropriate, and
18 further deny that "California Drivers" is a relevant class or subclass of the putative class asserted in
19 the Complaint. Defendants specifically deny that class treatment is appropriate, and deny that any
20 persons are "similarly situated." Defendants specifically deny that Plaintiffs or any member of the
21 putative class suffered any harm of any type, in any amount whatsoever, or at all. Defendants
22 specifically deny that they are, or were, the employer of any Plaintiffs or members of the putative
23 class or the putative collective action.

24
25 115.

26 Paragraph 115 contains assertions of law which require no answer. Defendants specifically deny
27 that Plaintiffs and/or "California Drivers" are entitled to any penalties, and deny that any "penalty
28 provisions" of the laws referenced are "applicable" as alleged in the Complaint. Defendants

1 specifically deny that Plaintiffs or any member of the putative class suffered any harm of any type,
2 in any amount whatsoever, or at all. Defendants specifically deny that they are, or were, the
3 employer of any Plaintiffs or members of the putative class or the putative collective action.
4 Defendants specifically deny that class treatment is appropriate, deny that any persons are "similarly
5 situated," and further deny that "California Drivers" is a relevant class or subclass of the putative
6 class asserted in the Complaint.

7
8 116.

9 Paragraph 116 contains assertions of law and procedure which require no answer. Defendants
10 specifically deny all other allegations of Paragraph 116. Defendants further specifically deny that
11 any aspect of this litigation pertains to the enforcement of rights, and deny that any aspect of this
12 litigation affects the public interest. Defendants specifically deny that Plaintiffs or any member of
13 the putative class suffered any harm of any type, in any amount whatsoever, or at all. Defendants
14 specifically deny that they are, or were, the employer of any Plaintiffs or members of the putative
15 class or the putative collective action. Defendants specifically deny that class treatment is
16 appropriate, and deny that any persons are "similarly situated."

17
18 117.

19 Paragraph 117 consists entirely of statements of law which require no answer. Defendants deny all
20 allegations of Paragraph 117, insofar as they seek to assert or imply that Defendants have acted
21 illegally, unlawfully, unfairly or improperly as alleged in this Complaint. Defendants incorporate
22 herein their denials of various allegations, as set forth elsewhere in this answer, to the extent that
23 such allegations are deemed to be incorporated into this paragraph.

24
25 118.

26 Paragraph 118 is unintelligible, and all allegations thereof are denied by Defendants on that basis.
27 Defendants specifically deny that they acted unlawfully as asserted in this paragraph, and further
28 deny that they engaged in illegal or unlawful actions as asserted in this paragraph. Defendants

1 incorporate herein their denials of various allegations, as set forth elsewhere in this answer, to the
2 extent that such allegations are deemed to be incorporated into this paragraph.

3
4 119.

5 Paragraph 119 contains statements of law which require no answer. Defendant specifically denies
6 all allegations of Paragraph 119, insofar as they seek to assert or imply that Defendants have
7 violated any California or Federal laws as alleged in this Complaint. Defendants further and
8 specifically deny that this action is "in the public interest," and deny that plaintiffs or their counsel
9 are entitled to attorneys' fees in any amount, for any reason, or at all.

10
11 120.

12 In response to the allegations of Paragraph 120, Defendants incorporate their Answers to Paragraphs
13 1-119 above. Defendant denies all allegations of Paragraph 120. Defendants specifically deny that
14 they committed, currently commit, and/or are continuing to commit any unlawful, unfair and/or
15 fraudulent business practices, as alleged in this paragraph.

16
17 121.

18 Defendants deny all allegations of Paragraph 121. Defendants specifically deny that class treatment
19 is appropriate, and further deny that "California Drivers" is a relevant class or subclass of the
20 putative class asserted in the Complaint. Defendants specifically deny that they were "unjustly
21 enriched" as described in this Complaint. Defendants specifically deny that they caused Plaintiffs
22 and/or any members of the putative class and/or "members of the general public" to suffer
23 compensable "losses," of any nature and in any amount whatsoever, or at all. Defendants further
24 deny that they were, or are, obligated to pay any monies whatsoever to Plaintiffs or any members of
25 the putative class by reason of such status or the laws referenced in this paragraph.

122.

Paragraph 122 is unintelligible, and all allegations thereof are denied by Defendants on that basis. Defendants specifically deny that class treatment is appropriate, and further deny that "California Drivers" is a relevant class or subclass of the putative class asserted in the Complaint. Defendants further deny any and allegations made in this paragraph, and specifically deny that they caused Plaintiffs, and/or any members of the putative class, and/or "members of the general public" to suffer compensable "losses," of any nature, in any amount whatsoever, or at all, and deny that plaintiffs are entitled to any of the relief described in this paragraph in any amount, or in any form, whatsoever, or at all. Defendants further deny that they engaged in any business practices that were, or are, "unfair" as that term is used in this paragraph, and deny that they were, or are, obligated to pay any monies whatsoever to Plaintiffs or any members of the putative class by reason of such status or the laws referenced in this paragraph.

123.

Defendants deny all allegations of Paragraph 123. Defendants specifically deny that class treatment is appropriate, and/or that any persons are "similarly situated," and further deny that "California Drivers" is a relevant class or subclass of the putative class asserted in the Complaint. Defendants specifically deny that Plaintiffs or any others persons are entitled to any relief based upon the Complaint, in any amount and in any manner whatsoever, or at all.

X. REQUEST FOR JURY TRIAL

124.

Defendants admit that Plaintiffs have demanded a jury as alleged in Paragraph 124. Defendants deny all other allegations of Paragraph 124. Defendants specifically deny that class treatment is appropriate, and/or that any persons are "similarly situated." Defendants further deny the existence and appropriateness of any "Nationwide FLSA Collective Action," and deny that any such action has been alleged in this action.

XI. PRAYER FOR RELIEF

125.

Defendants deny that Plaintiffs are entitled to any of the relief they seek as alleged in Paragraph 125, and further deny that plaintiffs are entitled to any relief of any kind, in any amount, whatsoever, or at all. Defendants specifically deny that collective action treatment is appropriate, deny that any designations should be made, or notices permitted, as requested, and further deny that plaintiffs are appropriate representatives of any class, and/or that any persons are "similarly situated." Defendants deny that any form of declaration, or declaratory relief or judgment is appropriate, and further deny that any basis for such relief has been alleged or asserted by plaintiffs.

126.

Defendants deny that Plaintiffs are entitled to any of the relief they seek as alleged in Paragraph 126, and further deny that plaintiffs are entitled to any relief or any kind, in any amount, whatsoever. Defendants specifically deny that class treatment is appropriate, deny that any designations should be made, or notices permitted, as requested, and further deny that plaintiffs are appropriate representatives of any class, and/or that any persons are "similarly situated." Defendants deny that any form of declaration, or declaratory relief or judgment is appropriate, and further deny that any basis for such relief has been alleged or asserted by plaintiffs. Defendants deny that they have violated any of the provisions of law set forth in this paragraph, and further deny that they have engaged in any business practices that are illegal, unlawful, unfair, and or improper under Cal. Business & Professions Code §§17200, *et seq.*

WHEREFORE, Defendants pray that Plaintiffs take nothing by their suit, that Defendants recover their costs of suit and attorneys' fees and expenses as provided by applicable law. Defendants further pray for any other, further, and/or different relief as the court may deem to be just, proper or appropriate.

AFFIRMATIVE AND OTHER DEFENSES

As further and affirmative defenses, Defendants allege as follows, without assumption of any obligations or burdens otherwise to be borne by plaintiffs by reason of the assertions and allegations of the Complaint.

FIRST AFFIRMATIVE DEFENSE**(Failure to State a Claim for Relief)**

The Complaint and each and every claim for relief set forth therein fails to state facts sufficient to constitute any legally valid claim for relief.

SECOND AFFIRMATIVE DEFENSE**(Franchisee Status)**

Plaintiffs' Complaint and each claim for relief therein are barred because Plaintiffs are, and/or were, not employees of Defendants, but rather were franchisees, at all times relevant to this action.

THIRD AFFIRMATIVE DEFENSE**(Independent Contractor Status)**

Plaintiffs' Complaint and each claim for relief therein are barred because Plaintiffs are, and/or were, not employees of Defendants, but rather were independent contractors, at all times relevant to this action.

FOURTH AFFIRMATIVE DEFENSE**(Statute of Limitations)**

Plaintiffs' Complaint and each claim for relief therein is barred, in whole or in part, by applicable statutes of limitations, including without limitation, those contained in California Code of Civil Procedure Sections 338 and 340; California Labor Code Section 203; California Business and Professions Code Section 17208; 29 U.S.C. §§ 255(a) and 256(b); and any other applicable statute.

FIFTH AFFIRMATIVE DEFENSE

(Contractual Limitation of Actions)

Plaintiffs' Complaint and each claim for relief therein is barred by the one-year contractual limitations on actions, set forth at Section 15(I) of the Unit Franchise Agreement (UFA) and § 8.8 of the Communication and Specialized Equipment Agreement applicable to the acquisition and/or operation of the particular franchise for which each plaintiff, putative class member and putative collective action member was working at the times relevant to the claims made in the Complaint. Both provisions read as follows: "The parties hereby acknowledge and agree that any arbitration, suit, action or other proceeding relating to this Agreement must be brought within one (1) year after the act or omission that is the subject of the arbitration, suit, action or other legal proceeding."

SIXTH AFFIRMATIVE DEFENSE

(No Class Action)

Plaintiffs' Complaint and each claim for relief therein cannot and should not be maintained on a class basis because those claims for relief, and each of them, fail to meet the necessary requirements for class certification, including class ascertainability, typicality, commonality, numerosity, superiority and adequacy of the class representatives and counsel. In addition, and alternatively, Plaintiffs' Complaint and each claim for relief therein, or some of them, are barred by valid waivers of class action adjudication of said claims.

SEVENTH AFFIRMATIVE DEFENSE

(Unconstitutional Class Action)

Certification of a class action under the circumstances of this case would violate Defendants' rights under the United States Constitution and the California Constitution.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Add an Indispensable Party)

Plaintiffs failed to add indispensable parties to this litigation. Said indispensable parties include, but

are not limited to, 1) the City Licensee(s) with whom the plaintiffs and any putative class members or collective action participants contracted to obtain their rights as franchisees, and 2) those franchisees who contracted with the City Licensee(s), and who then hired the plaintiffs, putative class members, and/or collective action participants to act as franchisees in the operation of the franchise thus obtained. Pursuant to Rules 12(b) (7) and 19 this Court should dismiss this Complaint for failure to add indispensable parties.

NINTH AFFIRMATIVE DEFENSE

(No Standing to Sue)

Plaintiffs' Complaint and each claim for relief therein, or some of them, are barred in whole or in part because Plaintiffs, or some of them, lack standing to sue.

ELEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiffs are barred from the relief sought in the Complaint by Plaintiffs' unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

By Plaintiffs' own acts and conduct, Plaintiffs are estopped from seeking the relief claimed in the Complaint, and each claim for relief therein.

TWELFTH AFFIRMATIVE DEFENSE

(Preemption)

Plaintiffs' Complaint and each claim for relief therein, or some of them, are preempted, in whole or in part, by federal law, and the federal regulation of interstate commerce in general and the transportation industry in particular.

THIRTEENTH AFFIRMATIVE DEFENSE

(Res Judicata and Collateral Estoppel)

Plaintiffs' Complaint and each claim for relief therein are barred by the doctrines of res judicata and collateral estoppel.

FOURTEENTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

Plaintiffs are barred from obtaining injunctive relief, because Plaintiffs have an adequate remedy at law and/or cannot satisfy other requirements for obtaining injunctive relief.

FIFTEENTH AFFIRMATIVE DEFENSE

(Waiver)

By Plaintiffs' own acts and conduct, Plaintiffs have waived the rights asserted in the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

(Release)

Plaintiffs' Complaint and each claim for relief therein, or some of them, are barred in whole or in part because said causes of action have been released by the plaintiffs, and/or by those upon whose right the claims of plaintiffs are based.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Privilege)

Plaintiffs' Complaint and each claim for relief therein, or some of them, are barred in whole or in part because Defendants were and are privileged to engage in the conduct alleged in the Complaint.

/ / /

/ / /

EIGHTEENTH AFFIRMATIVE DEFENSE

(Arbitration)

Plaintiffs' Complaint and each claim for relief therein, or some of them, may not be litigated in court because some or all of said individuals' causes of action are subject to individual mandatory, final and binding arbitration.

NINETEENTH AFFIRMATIVE DEFENSE

(Offset)

Plaintiffs' damages, if any, must be offset in whole or in part by amounts already collected by Plaintiffs and/or owing to and damages suffered by Defendants.

TWENTIETH AFFIRMATIVE DEFENSE

(Laches)

Plaintiffs are barred by the doctrine of laches from pursuing any of the remedies sought in the Complaint.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Failure to Comply With Statutory Prerequisites)

Plaintiffs claims for statutory penalties fail, in whole or in part, due to their failure to comply with mandatory prerequisites for such claims, established by statute, including, but not limited to, Cal. Labor Code §§ 2698 – 2699.5.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Plaintiffs failed to take reasonable steps to mitigate the damages they allegedly suffered as a result of the actions alleged in the Complaint, and any award against Defendants must be reduced by the amount of alleged damages Plaintiffs could have avoided had they taken reasonable steps to mitigate their damages.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Conduct Reasonable and in Good Faith/Not Willful)

Plaintiffs' Complaint and each claim for relief therein are barred in whole or in part, on the ground that Defendants acted in good faith, and in conformity with, and in reliance on, written administrative regulations, orders, rulings, guidelines, approvals and/or interpretations of federal and/or California agencies, and on the basis of a good faith and reasonable belief that they have complied fully with federal and California law.

WHEREFORE, Defendants prays for judgment as follows:

1. That the Complaint and each claim for relief therein be dismissed with prejudice;
2. That Plaintiffs take nothing by way of their unverified Complaint herein;
3. That Defendants' reasonable attorneys' fees and cost of suit herein be awarded; and
4. For such other and further relief as the Court may deem proper.

COUNTERCLAIMS

Defendants/Counterclaimants SuperShuttle International, Inc (SSI) and SuperShuttle Franchise Corporation, Inc (SSFC) (collectively, "Defendants/Counterclaimants") by and through their attorneys, allege as follows:

JURISDICTION

1. The Court has jurisdiction over this counterclaim pursuant to 28 USC § 1367(a)
2. Venue in the main action is proper. Therefore venue in the counterclaim is proper in this Court.

PARTIES

3. Upon information and belief, Plaintiff Roosevelt Kairy resides in Oakland, California (Alameda County).

4. Upon information and belief, Plaintiff Larry Brown resides in Los Angeles, California (Los Angeles County).

5. Upon information and belief, Plaintiff Wayne Dickson resides in Sacramento, California (Sacramento County).

6. Upon information and belief, Plaintiff (Edward) Drake Osmun resides in Concord, California (Contra Costa County).

7. Upon information and belief, Plaintiff Harjinder Singhdietz resides in Downey, California (Los Angeles County).

8. Upon information and belief, certain additional parties have purported to have signed a “consent to join form” with respect to this matter, and have therefore joined, or have attempted to join, the alleged collective action as Plaintiffs. It is possible that additional individuals may sign, or have signed, a “consent to join” form that will be filed by the court by Plaintiffs’ counsel. All such individuals will be referred to herein, collectively, as “Consent to Join Plaintiffs.”

9. SuperShuttle International, Inc. ("SSI") is, and was at the time of the institution of this civil action, incorporated under the laws of Delaware.

10. SuperShuttle Franchise Corporation ("SSFC") is, and was at the time of the institution of this civil action, incorporated under the laws of Delaware.

GENERAL ALLEGATIONS

11. SuperShuttle International (hereinafter “SSI”) owns the SuperShuttle trademarks, trade dress, color scheme, copyrighted material, and other characteristics of the SuperShuttle system.

12. By means of a master license agreement, SSI has granted to SuperShuttle Franchise Corporation (hereinafter "SSFC") the right to use the trademarks, trade dress, color scheme, and other characteristics of the SuperShuttle system. SSFC is responsible for interactions with state and federal regulatory agencies to maintain the legal status of the franchise system, for compliance with applicable franchise laws, and for negotiation and maintenance of license agreements with local operating companies.

1 13. Under the master license agreement with SSI, SSFC is the master franchisor of the
2 SuperShuttle system. Among other activities, SSFC contracts with various other companies (called
3 City Licensees) to use, and franchise the use of, the SuperShuttle proprietary business system and
4 trademarks within a specified geographic area. These City Licensees, in turn, seek and contract with
5 franchisees who wish to operate a shuttle van business using the SuperShuttle proprietary
6 reservation system and trademarks. These franchisees (called "Unit Franchisees") sign agreements
7 ("Unit Franchise Agreements") with the City Licensee responsible for the geographic area where the
8 Unit Franchisee wishes to operate. These Unit Franchisees may hire or allow other persons (e.g.,
9 "sub-drivers") to drive the units (shuttle vans), may form partnerships, may work the hours that they
10 wish, and may work whatever days they wish to work, subject to applicable laws. SSFC also
11 provides operating manuals that describe specific requirements of the franchise marketing system.
12 SSFC requires that the City Licensees maintain the quality of the services provided by franchisees to
13 the public, so that the high quality of the SuperShuttle brand is maintained. In their contracts with a
14 City Licensee, each Unit Franchisee agrees to meet certain quality of service standards, consistent
15 with operating a franchise under the SuperShuttle brand.

16 14. Subject to the provisions of their Unit Franchise Agreements, the Unit Franchisees
17 are licensed and entitled to use the SuperShuttle reservations system and the proprietary computer
18 trip generating system, whereby franchisees may "bid" on the automatically packaged groups of
19 individual customer reservations that, together, make up "trips" to carry passengers to and from
20 local airports. Under this system, franchisees schedule their own workdays and are free to "bid on"
21 or reject trips as their schedules and business and personal needs dictate. The opportunity to "bid"
22 is provided on a "first come-first serve" basis.

23 15. While conducting their business operations, Unit Franchisees must comply with a
24 variety of policies, procedures and licensing requirements mandated by local permitting authorities,
25 such as airports. They are required to follow all applicable laws and regulations, including those
26 imposed by the California Public Utilities Commission.

1 16. Unit Franchisees may transfer all or a part of their ownership interest in their
2 franchises. The franchisees are permitted to hire, and many do hire (or otherwise permit), "sub-
3 drivers" (non-franchisees) to drive the franchisee's SuperShuttle-branded van.

4
5 **FIRST COUNTERCLAIM FOR RELIEF – DECLARATORY RELIEF**

6 **(On Behalf of Defendants/Counterclaimants, Against Roosevelt Kairy, Harjinder Singhdietz,**
7 **Larry Brown, Drake Osmun, Wayne Dickson, Consent to Join Plaintiffs,**
8 **And Any and All Future Plaintiffs)**

9 17. Defendants/Counterclaimants hereby refer to and incorporate by reference
10 paragraphs 1 through 16, above, of this Counterclaim, as though set forth in full herein.

11 18. An actual controversy has arisen and now exists between plaintiffs and
12 Defendants/Counterclaimants concerning their respective rights and duties, in that plaintiffs contend
13 that they are "employees" of Defendants/Counterclaimants in repudiation of some or all of the terms
14 of their Unit Franchise Agreements with City Licensees, and their operations thereunder, whereas
15 Defendants/Counterclaimants dispute these contentions and contend that plaintiffs are franchisees of
16 City Licensees and further contend that plaintiffs are not employees of either or both
17 Defendants/Counterclaimants.

18 19. Defendants/Counterclaimants desire a judicial determination of these matters, which
19 affect the rights and duties of Defendants/Counterclaimants, and desire a declaration that the
20 franchisees are, in fact, independent franchisees and not employees of either or both of
21 Defendants/Counterclaimants.

22 20. In light of the ongoing nature of the business activities affecting certain plaintiffs and
23 Defendants/Counterclaimants, a judicial declaration is necessary and appropriate at this time.
24 Defendants/Counterclaimants need such a declaration in order to ascertain their rights, and
25 obligations so that they may put their business affairs in order and operate accordingly under the
26 applicable laws. Until resolution is made of these matters, Defendants/Counterclaimants suffer and
27 continue to suffer from the unsettled state of affairs in that the plaintiffs continue to seek imposition
28

of financial liabilities upon the Defendants/Counterclaimants which would be catastrophic to their business operations.

**SECOND COUNTERCLAIM FOR RELIEF – ACCOUNTING, OFFSET AND
RESTITUTION**

**(On Behalf Of Defendants/Counterclaimants, Against Roosevelt Kairy, Harjinder
Singhdietz, Larry Brown, Drake Osmun, Wayne Dickson, Consent to Join Plaintiffs,
And Any and All Future Plaintiffs)**

Count 1: Accounting

21. Defendants/Counterclaimants hereby refer to and incorporate by reference paragraphs 1 through 20, above, of this Counterclaim, as though set forth in full herein.

22. The plaintiffs, as well as those whom plaintiffs seek to include in the action as putative class members or collective action members (“prospective plaintiffs”), were in positions which permitted them to receive money directly from riders, including passengers transported by their Unit Franchises during the period in which they operated, or participated in such franchises. The full amount of such sums are not known to Defendants/Counterclaimants, because such sums frequently included cash payments of fees and/or gratuities, etc.

23. As to all cash sums collected by plaintiffs and/or prospective plaintiffs during all relevant periods of time, the plaintiffs and prospective plaintiffs were and are in a superior position to that of the Defendants/Counterclaimants to know the precise amounts of the sums collected during the operation of their Unit Franchises. In the event that some or all of the plaintiffs and/or prospective plaintiffs prevail in their assertions of employment status, Defendants/Counterclaimants require an accounting of cash payments collected, as well as credit card receipts for passenger transportation, in order to determine to what extent the monies that plaintiffs and/or prospective plaintiffs collected met or exceeded the sums they claim they are entitled to as alleged in the Complaint, including wages, overtime, meal or rest period premium payments, etc.

24. Defendants/Counterclaimants therefore seek an order of this court setting such an accounting.

Count 2: Offset

25. Defendants/Counterclaimants seek an order requiring that all claims of Plaintiffs and/or prospective plaintiffs and alleged monies owed to them, be offset by any and all sums collected by them, regardless of the source of such funds, as a result of their operations of the Unit Franchise which they owned, or for which they performed services.

Count 3: Restitution

26. In the contractual franchise relationship from which Plaintiffs and all prospective plaintiffs have benefitted, Plaintiffs/prospective plaintiffs keep all cash fares they collect, and also are disbursed all credit card charges, less franchise and other fees. Had Defendants/Counterclaimants known that Plaintiffs and/or prospective plaintiffs would seek to renounce franchisee status through this suit, and/or claim that franchisee status is not relinquished but that Plaintiffs and prospective plaintiffs are nonetheless entitled to compensation on an "employee" basis, and seek to obtain employee-based compensation, Defendants/Counterclaimants would not have accepted a structure where Plaintiffs and/or prospective plaintiffs kept passenger cash fares and were disbursed credit card charges. Rather, Defendants/Counterclaimants would themselves have collected and retained the revenue generated.

27. In the event it is determined that Plaintiffs and/or prospective plaintiffs are entitled to employee-based compensation as alleged in their Complaint against Defendants, Defendants/Counterclaimants further seek an order of this court requiring that Plaintiffs and/or prospective plaintiffs pay to Defendants/Counterclaimants any and all sums collected by Plaintiffs and/or prospective plaintiffs, regardless of the source of such funds, as a result of their operations of the Unit Franchise which they owned, or for which they performed services, and which exceeded the statutory minimum payment for employees; *e.g.*, the minimums required for wages, overtime, meal or rest period premium payments, etc.

THIRD COUNTERCLAIM FOR RELIEF - UNJUST ENRICHMENT

(On Behalf Of Defendants/Counterclaimants, Against All Plaintiffs, Consent To Join Plaintiffs, Putative Collective Action Members, And Putative Class Members Who Have Retained Money as Franchisees in Excess of the Statutory Minimums Applicable to Employees)

28. Defendants/Counterclaimants hereby refer to and incorporate by reference paragraphs 1 through 29, above, of this Counterclaim, as though set forth in full herein.

29. Certain Unit Franchisees have brought this action seeking a reclassification as “employees,” a determination that they are, and have been, “employees,” and damages associated with “employee” status. Defendants/Counterclaimants have contended and continue to contend that there is no basis in law or fact for such reclassification, determination or status. However, in the event that Unit Franchisees prevail on this issue, Defendants/Counterclaimants assert this claim.

30. On information and belief, Defendants/Counterclaimants contend that the income that some or all of the plaintiffs, Consent to Join Plaintiffs, putative collective action members, and putative class members have derived from their Unit Franchises exceeds the minimum amounts required by law to be paid to “employees.”

31. Plaintiffs, Consent to Join Plaintiffs, putative collective action members, and putative class members, if awarded minimum wage, overtime, and other payments and/or penalties in addition to the income already derived as a result of their interest in their Unit Franchise over the same period of time, will receive a windfall.

32. Defendants/Counterclaimants, therefore, seek recovery of all monies paid to plaintiffs, Consent to Join Plaintiffs, putative collective action members, and putative class members, on account of their operation of their Unit Franchise(s), in excess of minimum wage, overtime, and other payments and/or penalties to which they are found to be entitled, and any other relief the court deems proper.

FOURTH COUNTERCLAIM FOR RELIEF - CONTRACTUAL INDEMNITY

(On Behalf Of Defendants/Counterclaimants, Against Roosevelt Kairy, Harjinder Singhdietz, Larry Brown, Drake Osmun, Wayne Dickson And All Consent to Join Plaintiffs, Putative Collective Action Members, And Putative Class Members Who Signed Unit Franchise Agreements)

Count 1

33. Defendants/Counterclaimants hereby refer to and incorporate by reference paragraphs 1 through 32, above, of this Counterclaim, as though set forth in full herein.

34. It is Defendants/Counterclaimants' contention that they have no liability as to any of the purported claims asserted in the Second Amended Complaint, or otherwise. However, in the event that any plaintiffs, Consent to Join Plaintiffs, and certain putative collective action and putative class members, prevail in their claims against any Defendants/Counterclaimants, said Defendants/Counterclaimants assert this claim for indemnity.

35. Plaintiffs, certain Consent to Join Plaintiffs and certain putative collective action and putative class members, have entered into written "Unit Franchise Agreements" with City Licensees, as set forth above. These Plaintiffs, certain Consent to Join Plaintiffs, certain putative collective action and certain putative class members are Unit Franchisees.

36. Unit Franchisees have agreed to pay, and have paid money to a City Licensee, in exchange for the ability to utilize Defendants/Counterclaimants' marks, systems and franchise structure, consistent with the agreement between such City Licensee and SSFC.

37. Each Unit Franchise Agreement relevant to this action states, at page 30, ¶ 14, under the heading "INDEMNIFICATION OF CITY LICENSEE," the following:

"Franchisee and its respective affiliates and associates, officers, directors, shareholders, partners, members, agents, representatives and assignees shall, during the Term and after the termination or expiration of this Agreement, protect, defend, indemnify and hold the City Licensee, SuperShuttle and their respective affiliates and associates, officers, directors, shareholders, employees, agents, representatives and assignees harmless against any and all liability for all claims of any nature arising in any way out of or relating to Franchisee's and any Operator's actions or failure to act, whether personal or in connection with the operation of the Vehicle. For purposes of this indemnification, "claims" means and includes all obligations,

1 actual and consequential damages, losses, claims, demands, liens, reckonings,
2 accounts and costs incurred in the defense of any claim (such as, by way of
3 illustration, but not limitation, accountants' attorneys' and expert witness fees, costs
4 of investigation and proof of facts, court costs, other litigation expenses and travel
5 and living expenses). City Licensee and SuperShuttle shall have the right to defend
6 any such claim against them with counsel of their own choosing and Franchisee
7 agrees to cooperate fully with City Licensee and SuperShuttle in connection with
8 the defense of any claim. In addition, Franchisee agrees to cooperate fully with
9 City Licensee and SuperShuttle in any other claims brought by or against them."

10 All relevant Unit Franchise Agreements contain this term and the other terms relevant to this claim.

11 38. As a result of the instant lawsuit, Defendants/Counterclaimants, have incurred costs
12 including but not limited to: court costs, attorney's fees, accountant's fees, and expert fees.
13 Defendants/Counterclaimants have incurred, and continue to incur these damages as a direct and
14 proximate result of the instant lawsuit.

15 39. Plaintiffs, Consent to Join Plaintiffs, putative collective action, and putative class
16 members who signed any similar agreement containing the terms set forth above, are therefore
17 contractually obligated to defend and indemnify Defendants/Counterclaimants, for all "obligations,
18 actual and consequential damages, losses, claims, demands, liens, reckonings, accounts and costs
19 incurred in the defense of any claim (such as, by way of illustration, but not limitation, accountants'
20 attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other
21 litigation expenses and travel and living expenses" that resulted from their status as franchisees.

22 40. Defendants/Counterclaimants, seek recovery of all liabilities, costs and expenses of
23 suit including but not limited to attorneys' fees and costs of action to be paid by Defendants and any
24 other relief the court deems proper.

25 Count 2

26 41. Defendants/Counterclaimants hereby refer to and incorporate by reference
27 paragraphs 1 through 40, above, of this Counterclaim, as though set forth in full herein.

28 42. As set forth above, any Unit Franchisee is allowed to hire, contract, or otherwise
employ or allow one or more other persons to transport passengers or otherwise perform services for
the benefit of the Unit Franchise ("sub-drivers"). On information and belief, some sub-drivers have
joined, or will join, this law suit as Consent to Join Plaintiffs, putative class members, or putative

1 collective action members. In the event that this litigation results in any sums being award against
 2 Defendants/Counterclaimants, and in favor of such sub-drivers, then the Unit Franchisee for whom
 3 such sub-franchisees worked, drove, or performed services, are obligated by the terms of the Unit
 4 Franchise Agreements, as set forth herein, to indemnify Defendants/Counterclaimants for all such
 5 sums, in addition to all costs of defense including attorneys' fees, expenses and court costs.

6 43. As a result of the instant lawsuit, Defendants/Counterclaimants, have incurred, and
 7 will continue to incur, costs including but not limited to court costs, attorneys' fees, accountant's
 8 fees, and expert fees. Defendants/Counterclaimants have incurred, and will continue to incur these
 9 costs, as a direct and proximate result of the instant lawsuit.

10 44. Defendants/Counterclaimants, therefore, seek recovery of all such costs from Unit
 11 Franchisees who hired sub-franchisees whom they failed to pay according to law, and whose claims
 12 result in any liability on the part of the Defendants/Counterclaimants, including but not limited to:
 13 attorneys' fees, expenses, court costs, any sums ordered to be paid by Defendants/Counterclaimants
 14 to any sub-franchisees of such Unit Franchisees or their franchises or their vehicles, and any other
 15 relief the court deems proper.

16 **FIFTH COUNTERCLAIM FOR RELIEF - EQUITABLE INDEMNITY**

17 **(On Behalf Of Defendants/Counterclaimants, Against Roosevelt Kairy, Harjinder Singhdietz,**
 18 **Larry Brown, Drake Osmun, Wayne Dickson And Consent to Join Plaintiffs Who Are Unit**
 19 **Franchisees)**

20
 21 45. Defendants/Counterclaimants hereby refer to and incorporate by reference
 22 paragraphs 1 through 44, above, of this Counterclaim, as though set forth in full herein.

23 46. In the event that this litigation results in any sums being awarded against
 24 Defendants/Counterclaimants, and in favor of "sub-franchisees," (as described above), then any
 25 such liability would have been most directly, proximately and immediately caused by the actions
 26 and/or omissions, in violation of applicable law, of the Unit Franchisee for whom such sub-
 27 franchisees worked, drove, or performed services. Any liability on the part of
 28

Defendants/Counterclaimants would be, by comparison passive, indirect and/or vicarious, and would be of a "pass-through" nature.

47. Based upon the foregoing, Defendants/Counterclaimants would be entitled to equitable indemnity for any and all such sums, from the Unit Franchisee for whom such sub-franchisees worked. Defendants/Counterclaimants, therefore, seek recovery of all such sums from Unit Franchisees who hired sub-franchisees whom they failed to pay according to law, and whose claims result in any liability on the part of the Defendants/Counterclaimants.

SIXTH COUNTERCLAIM FOR RELIEF - TRADEMARK INFRINGEMENT,

LANHAM ACT

(On Behalf Of Defendant/Counterclaimant SuperShuttle International, Inc., Against Plaintiff Wayne Dickson)

48. Defendants/Counterclaimants hereby refer to and incorporate by reference paragraphs 1 through 47, above, of this Counterclaim, as though set forth in full herein.

49. The trademark, service mark, and trade name "SuperShuttle" used in conjunction with a shuttle service is the property of SuperShuttle International, Inc. ("SSI"). The trademark and/or trade dress of utilizing a particular blue and yellow lettering and color scheme on a van used to transport passengers to and from airports is also the property of SSI.

50. SSI has protected its trademarks, service marks, names, symbols, and trade dress from infringement, and has publically asserted its entitlement to exclusive rights to use, license and otherwise control them. SSI has filed service marks with the United States Patent and Trademark Office, as follows: Registration Number 1422276 (filed September 1983, renewed and currently active), word mark: "SUPERSHUTTLE"; Registration Number 1629477 (filed December 1988, renewed and currently active), service mark: design, colors and lettering; and Registration Number 1629481 (filed November 1989, renewed and currently active), service mark: design, colors and lettering.

51. Plaintiff Wayne Dickson ("Dickson") entered into a written contract with a City Licensee of SuperShuttle International, Inc. ("SSI") for the purchase of a SuperShuttle-branded Unit

1 Franchise. This written contract is called a "Unit Franchise Agreement." SSI was a third-party
2 beneficiary to that contract.

3 52. The Unit Franchise Agreement provided terms for the protection of SSI's
4 trademarks, symbols, service marks and trade dress, as well as SSI's franchise structure and other
5 proprietary business information. In executing the Unit Franchise Agreement, Dickson agreed to
6 comply with all such terms.

7 53. The applicable "Unit Franchise Agreement" prohibits the misappropriation and
8 dilution of SSI's trademarks, symbols, service marks and trade dress.

9 54. SSI has developed a particular blue and yellow van style and font style for its
10 vehicles. This design is protected under trademark law, and covered under the above-mentioned
11 provisions of the "Unit Franchise Agreement."

12 55. Plaintiff Wayne Dickson ("Dickson") was additionally notified of the protected
13 nature of SuperShuttle trademarks, service marks, names, symbols, and trade dress in the
14 confidential "Unit Franchise Operations Manual," provided to him in connection with his franchise.

15 56. Plaintiff Dickson has used SSI's trademark and trade dress in violation of 15 USC §
16 1125(a) (1), and in connection with an airport shuttle business he formed after terminating his Unit
17 Franchise Agreement that he calls "Sierra Shuttle." Specifically, Plaintiff Dickson has used,
18 without permission, SSI's trademarks, symbols, service marks, and trade dress on shuttle vehicle(s)
19 in his business, in his advertisements, and in his solicitation of business through and servicing of
20 internet-based advertisements, telephone listings and a "myspace" web site:
21 <http://profile.myspace.com/index.cfm?fuseaction=user.viewProfile&friendID=385633774>. The acts
22 of Dickson, as set forth above, are in violation of the Lanham Act (15 USC §§ 1051, *et seq.*). True
23 and correct copies of printouts from this website are attached as *Exhibit A* and incorporated by
24 reference herein.

25 57. Dickson's advertising is an attempt to pass himself off as SSI and/or as affiliated
26 with SSI, and to induce the public unwittingly to contact Dickson's company (Sierra Shuttle) rather
27 than SSI's licensees, and/or to hail his van(s) in airport shuttle lines to the detriment of SSI's
28 licensees and to the detriment of the Unit Franchisees providing shuttle service through the

1 reservations and marketing system utilized by the City Licensees of SSI. Dickson has done so, and
 2 is continuing to do so, by utilizing confusingly similar trade name ("Sierra Shuttle") and trade dress
 3 (inverted color scheme and identical font and appearance) for his van(s) and his advertising of his
 4 shuttle service. In addition, Dickson's advertisements were, and are, likely to deceive the public as
 5 to the identity, nature and quality of the shuttle services that Dickson provides.

6 58. Dickson's conduct has, and will continue to create a likelihood of confusion as to
 7 SSI's trademark, service mark, and trade name "SuperShuttle" in conjunction with a shuttle service,
 8 and Dickson's mark and name "Sierra Shuttle" in conjunction with a shuttle service.

9 59. Dickson's use of the mark "Sierra Shuttle" in an area where SSI's marks are present
 10 causes dilution of the strong public recognition of SSI's mark.

11 60. SSI requests that Dickson voluntarily change the marks and dress he uses for his
 12 airport shuttle company, so as not to engage in mark infringement and dilute SSI's marks. SSI does
 13 not seek relief that involves termination of Dickson operating a shuttle service; only that his
 14 company change its markings so that it is not confusingly similar to the SSI brand. Should
 15 Dickson fail to do so voluntarily SSI is entitled to injunctive and other relief pursuant to the conduct
 16 alleged herein. SSI has a right to injunctive relief in that no adequate remedy at law exists should
 17 Dickson's conduct persist. Should those actions continue, SSI's customers and the public will
 18 continue to be confused, thereby damaging SSI's business reputation in the community.

19 20 **PRAYER FOR RELIEF**

21 WHEREFORE, Defendants/Counterclaimants pray for judgment on the causes of action as
 22 follows:

- 23 a) For an order granting Defendants/Counterclaimants restitution of all monies received by
- 24 Defendants as a result of the conduct alleged herein;
- 25 b) For indemnification for all liabilities, attorneys fees and costs of defense and court costs;
- 26 c) For general damages according to proof;
- 27 d) For special damages according to proof;
- 28 e) For an accounting of all sums obtained by Plaintiffs by virtue of the operation of their

Unit Franchises;

f) For a permanent injunction, including the following orders:

(1) An order restraining and enjoining Plaintiff Wayne Dickson and anyone acting in concert with him from using trade names, fictitious business names, service marks and other identification marks that conflict with, and imitate, the trade names, fictitious business names, service marks and other identification marks of Defendant/Counterclaimant SuperShuttle International, Inc., or derivations thereof, in a manner that is misleading or confusing to the public, including but not limited to: "Sierra Shuttle";

(2) An order restraining and enjoining Plaintiff Wayne Dickson and anyone acting in concert with him from answering the following telephone numbers listed and advertised in print and internet-based telephone directories and the web site, <http://profile.myspace.com/index.cfm?fuseaction=user.viewProfile&friendID=385633774>, 916-271-4935 [telephone], and from answering requests for service directed to etmcasting1@yahoo.com; OR, IN THE ALTERNATIVE, an order commanding Plaintiff Dickson and anyone acting in concert with him to automatically forward all incoming calls dialed to SuperShuttle International, Inc.'s telephone numbers listed and advertised in print and internet-based telephone directories and the web site, to SuperShuttle International, Inc.'s website (www.supershuttle.com), and telephone number (800-BLUE-VAN [800-258-3826]); numbers subject to forwarding under this order include 916-271-4935 [telephone], and requests for service directed to etmcasting1@yahoo.com shall likewise be forwarded to the email address of SuperShuttle International, Inc. (reservations@supershuttle.net); and all internet traffic to <http://profile.myspace.com/index.cfm?fuseaction=user.viewProfile&friendID=385633774>, shall be forwarded to www.supershuttle.com;

g) For costs of suit herein, including reasonable attorneys' fees; and,

h) For such other relief as this court may deem necessary and proper.

/ / /

DEMAND FOR JURY TRIAL

Pursuant to the Federal Rules of Civil Procedure Rule 38, Defendants/Counterclaimants SuperShuttle International, Inc. and SuperShuttle Franchise Corporation hereby demand a jury trial on all issues triable by jury.

Dated: February 26, 2009

MARRON & ASSOCIATES

By: 

Paul J. Marron, Esq.

Steven C. Rice, Esq.

Andre Y. Bates, Esq.

Attorneys for Defendants/Counterclaimants

EXHIBIT A

Sponsored Links

Blitz Transportation
Reliable & Professional Limousine Services
www.LocalAdLink.com

DFW Airport Limo
We are courteous; competitive and can transport you to work or play
DFWStandbyLimo.com

Web Search

Home Browse People Find Friends Forums Music Video More Sierra Shuttle Log In Sign Up

Sierra Shuttle



"AIRPORT SHUTTLE"
Male
46 years old
SACRAMENTO,
California
United States

Last Login: 2/5/2009

Sierra Shuttle Now offering flat rates to the Sacramento Intl Airport and Thunder Valley Casino

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Mood: blessed
View My: [Pics](#) | [Videos](#)

Contacting Sierra Shuttle

- | | |
|--------------------------------|-----------------------------------|
| Send Message | Forward to Friend |
| Add to Friends | Add to Favorites |
| IM / Call | Block User |
| Add to Group | Rank User |

MySpace URL:
www.myspace.com/sierrashuttle

Sierra Shuttle's Interests

General



review us on
[insiderpages](#)
etmcasting1@yahoo.com. >



Who I'd like to meet:

000065

Sponsored Links

Blitz Transportation
Reliable & Professional Limousine Services
www.LocalAdLink.com

DFW Airport Limo
We are courteous, competitive and can transport you to work or play
DFWStandbyLimo.com

Web Search

Home Browse People Find Friends Forums Music Video More Sierra Shuttle Log In Sign Up

Sierra Shuttle



Reservations
916-271-4935
Business Hours: 9 AM - 5 PM
Evening Hours: 5 PM - 11 PM
Weekend Hours: 10 AM - 10 PM
24-hour emergency service 916-271-4935

"AIRPORT SHUTTLE"

Male
46 years old
SACRAMENTO,
California
United States

Last Login: 2/5/2009

Mood: blessed
View My: Pics | Videos

Contacting Sierra Shuttle

- | | |
|----------------|-------------------|
| Send Message | Forward to Friend |
| Add to Friends | Add to Favorites |
| IM / Call | Block User |
| Add to Group | Rank User |

MySpace URL:
www.myspace.com/sierrashuttle

Sierra Shuttle's Interests

General



Sierra Shuttle Now offering flat rates to the Sacramento Intl Airport and Thunder Valley Casino

Sierra Shuttle's Latest Blog Entry [[Subscribe to this Blog](#)]

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Sierra Shuttle's Blurbs

About me:

Welcome to Sierra Shuttle.Sacramento Independent Shuttle Service. We are a licensed and insured shuttle company that provides door to door pick-up and drop-off shuttle services to the Sacramento International Airport, Greyhound, Amtrak, Casinos. Our company also has available charter runs to San Francisco for a very low rate than any other company. We run 7 days a week, 365 days a year including holidays. We provide excellent customer service to our customers by being on time, courteous drivers and provide you with a smooth and comfortable ride wherever your destination may be. We have available 12 passenger van with extra large luggage space. We offer great group rates at a reasonable rate as well as senior citizen discounts. Our Drivers will greet you with a friendly smile and help you with carrying and loading your luggage from your front doorstep to airport curbside. Need a designated Driver? We offer pickup and drop-offs from where ever you may be straight to your door. Rates will vary depending on location. For reservations please call and book at least 48 hours in advance at 916-271-4935 or check us out at

review us on
insiderpages

etmcasting1@yahoo.com. >



Who I'd like to meet:

000066

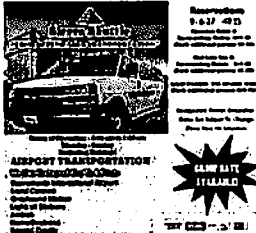
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Reliable Limo Service
Reliable Service, Affordable rates Servicing All airports 800.640.0700
www.PioneerLimo.net

Web Search

Home Browse People Find Friends Forums Music Video More Sierra Shuttle Log In Sign Up

Sierra Shuttle



"AIRPORT SHUTTLE"

Male
46 years old
SACRAMENTO,
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Last Login: 2/5/2009

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| Send Message | Forward to Friend |
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General



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Sierra Shuttle's Latest Blog Entry (Subscribe to this Blog)

Sierra Shuttle (view more)

(View All Blog Entries)

Sierra Shuttle's Blurbs

About me:

Welcome to Sierra Shuttle, Sacramento Independent Shuttle Service. We are a licensed and insured shuttle company that provides door to door pick-up and drop-off shuttle services to the Sacramento International Airport, Greyhound, Amtrak, Casinos. Our company also has available charter runs to San Francisco for a very low rate than any other company. We run 7 days a week, 365 days a year including holidays. We provide excellent customer service to our customers by being on time, courteous drivers and provide you with a smooth and comfortable ride wherever your destination may be. We have available 12 passenger van with extra large luggage space. We offer great group rates at a reasonable rate as well as senior citizen discounts. Our Drivers will greet you with a friendly smile and help you with carrying and loading your luggage from your front doorstep to airport curbside. Need a designated Driver? We offer pickup and drop-offs from where ever you may be straight to your door. Rates will vary depending on location. For reservations please call and book at least 48 hours in advance at 916-271-4935 or check us out at

review us on
insiderpages

ctmcasting1@yahoo.com. >



Who I'd like to meet:

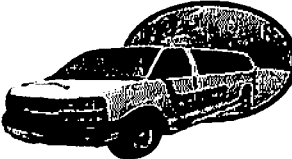
Sierra Shuttle's Details

000067


Status: Married
 Here for: Networking
 Orientation: Straight
 Hometown: Sacramento
 Zodiac Sign: Virgo
 Children: Proud parent
 Education: Some college
 Occupation: Manager of Operations

Sierra Shuttle's Companies	
Sierra Shuttle Sacramento, California US Owner Transportation	2008

SIERRA SHUTTLE
CASINO TRANSPORTATION
 YOUR PREMIER RIDE FOR THUNDER VALLEY FUN AT THE THUNDER VALLEY CASINO



AIRPORT RESERVATIONS: (916) 271-4935
 Shuttle Circuit: Every 3 hours.
 Free Schedule TAKE ONE



Reservations
 916-271-4935
 Email: reservations@sierrashuttle.com

DOOR TO DOOR AIRPORT SHUTTLE
 FROM RED LION INN ARDEN VILLAGE TO:

- Sacramento International Airport
- Thunder Valley Casino
- Orchard
- Arden

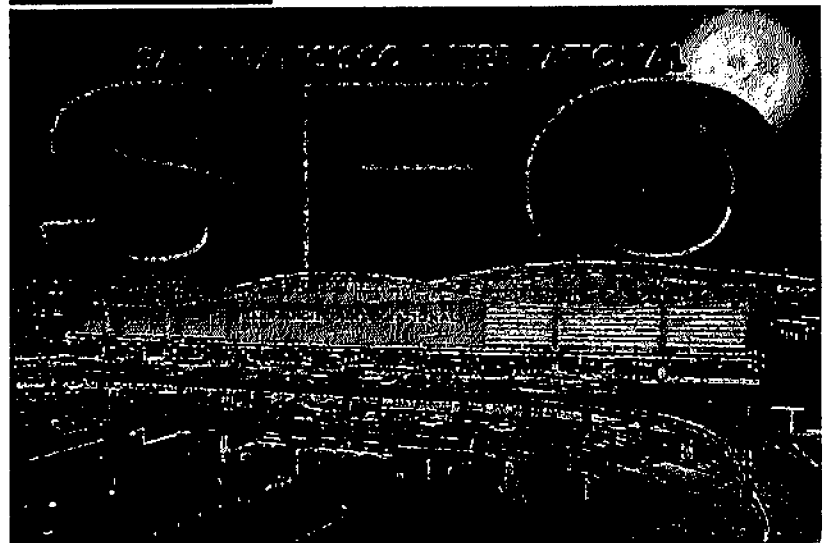
Sierra Shuttle

Sacramento International Airport

GRABITZ
 916-524-1066 / 916-524-1067

Expedia

facebook



Sierra Shuttle's Friend Space (Top 8)

Sierra Shuttle has 8 friends.

MIXTURE

THE
 OFFICIAL
 CINESCOPE
 WEBPAGE

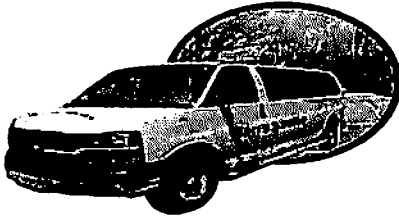
Justin
 Ferrari

Trojan
 Productions

000068

**SIERRA SHUTTLE
CASINO TRANSPORTATION**


YOUR PREMIER RIDE FOR THUNDER VALLEY FUN AT
THE THUNDER VALLEY CASINO



AIRPORT RESERVATIONS: (916) 271-4935
Shuttle Circuit Runs: Every 1 hour.


Free Schedule TAKE ONE

000069



Reservations
916-271-4935

visit
sierrashuttle.com


Sierra Shuttle

DOOR TO DOOR AIRPORT SHUTTLE

FROM RED LION INN ARDEN VILLAGE TO:

- Sacramento International Airport
- Thunder Valley Casino
- Graceland
- Arden

000070

— Free Schedule Take One —

Casino Transportation
Sierra Shuttle



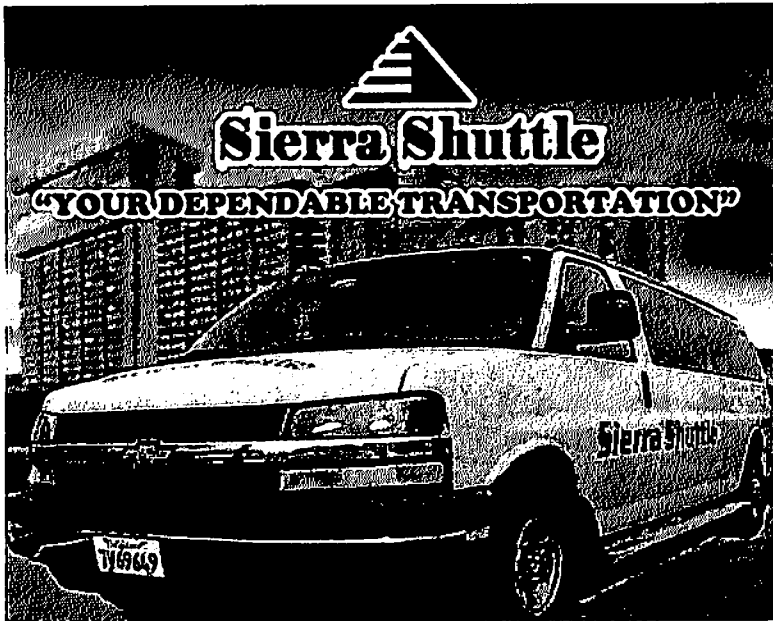
Airport Reservations
(916) 271-4935

Shuttle Circuit Runs :
See schedule for detailed time

**Your premier ride for
Thunder Valley Fun at
Thunder Valley Casino !**



000071



Hours of Operation - 5:00 am to 1:30 am

Monday - Sunday

Including Holidays

AIRPORT TRANSPORTATION

We Can Transport You To & From-

Sacramento International Airport

Local Casinos

Greyhound Station

Lightrail Stations

Amtrak

Home/Business

Special Events

Reservations

916-271-4935

Sheraton Hotel &

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(Each additional person \$9.00)

Red Lion Inn &

Surrounding Hotels - \$15.00

(Each additional person \$9.00)

Local Casinos - \$40.00 (one way)

(Each additional person \$10.00)

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(Rates Are Subject To Change)

(Fares Vary On Location)



WE Accept



000072